

No. 11282

15.2441

United States
Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA, for the use
of RECONSTRUCTION FINANCE COR-
PORATION, a Federal Corporation, acting in
behalf of DEFENSE PLANT CORPORA-
TION, a Federal Corporation,

Appellant,

vs.

SAM BLOCK,

Appellee.

Transcript of Record

In Two Volumes


VOLUME I

Pages 1 to 264

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

EUGENE D. WILLIAMS

Special Assistant to the Attorney General,
808 U. S. Post Office & Court House Bldg.,
Los Angeles 12, Calif.

For Appellee:

DECHTER, HOYT, PINES & WALSH,

B. L. HOYT,

633-7 Subway Terminal Bldg.,
417 S. Hill St.,
Los Angeles 13, Calif. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States, In and
For the Southern District of California, Central Division

No. 2454-B Civil

UNITED STATES OF AMERICA, for the use of
RECONSTRUCTION FINANCE CORPORATION, a Federal Corporation, acting in
behalf of DEFENSE PLANT CORPORATION, a Federal Corporation,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE CITY
OF LOS ANGELES, COUNTY OF LOS
ANGELES, STATE OF CALIFORNIA;
CITY OF LOS ANGELES, a municipal corporation; COUNTY OF LOS ANGELES, a
body politic and corporate; STATE OF CALIFORNIA, a corporation sovereign; ASSOCIATED LAND OWNERS, INC., a corporation;
DOE ONE to DOE TWO THOUSAND,
Defendants.

COMPLAINT IN CONDEMNATION

To the Honorable, the United States District Court:

Comes Now the plaintiff, United States of America, on behalf, for the use, and at the request of Reconstruction Finance Corporation, by Leo V. Silverstein, United States Attorney for the Southern District of California, Irl D. Brett, Special Assistant to the Attorney General, and Frederick

H. Steinmetz, Special Attorney, Lands Division, Department of Justice, as its attorneys, on application of the duly authorized officer of the United States, hereinafter referred to as the "Requesting Officer," and under the direction and by authority of the Attorney General of the United States, for cause of action against the above named defendants, and each of them, complains and alleges:

I.

That the plaintiff is entitled to acquire, by the exercise of its power of eminent domain, the property hereinafter described, for the uses and purposes hereinafter set forth.

II.

That in accordance with the provisions of the statutes hereinafter set forth, said Requesting Officer, for and in behalf of the United States, has designated and determined the property hereinafter described is suitable and necessary for the purposes of the United States, and has selected such property for acquisition by the United States in these proceedings, and said selection, designation, and determination ever since have been and now are in full force and effect; that the purposes for which the plaintiff is taking said property as hereinafter alleged are necessary and constitute a public use, which use is authorized by law; that the acquisition thereof by plaintiff is, and will be, of greatest public benefit and to the least private injury; that plaintiff is informed and believes, and upon such information and belief alleges, that no part of said property has

heretofore been appropriated to any public use, and if any part or portion thereof has heretofore been appropriated to a public use, the use to which said property is herein sought to be condemned and appropriated is a more necessary and paramount public use. [3]

III.

That plaintiff is informed and believes, and upon such information and belief alleges, that the parcels of property hereinafter described constitute the whole of various parcels, and not parts thereof.

IV.

That plaintiff has named herein by their true names, or by fictitious names, all defendants known by it to have some interest in said property; that there may be other persons having some interests therein whom the plaintiff hereby identifies as unknown persons, and makes such unknown persons defendants herein, to the end that said property may be vested in the United States of America to the extent hereinafter prayed for.

V.

That the defendants Doe One to Doe Two Thousand, inclusive, Defendants One Doe Corporation to Five Hundred Doe Corporation, inclusive, Defendants One Doe Company to Five Hundred Doe Company, inclusive, and Defendants One A Doe to Two Hundred A Doe, inclusive, as the Executors or Administrators, respectively, of the Estates of One B Doe, Deceased, to Two Hundred B Doe, Deceased, inclusive, are each sued or named herein under the fictitious names above set out, for the reason that

plaintiff is ignorant of the true names of said defendants or decedents; that when the true names of said defendants or decedents, or any of them, are discovered, plaintiff will amend accordingly, the pleadings or proceedings herein.

That One Doe Corporation to Five Hundred Doe Corporation, inclusive, are corporations organized and existing under the laws of one of the states of the United States; that One Doe Company to Five Hundred Doe Company, are co-partnerships duly organized and existing, each one of which is composed of two or more co-partners; that One A Doe to Two Hundred A Doe, inclusive, are, respectively, the duly appointed, qualified and acting Administrators or Executors of the Estates of One B Doe, Deceased, to Two Hundred B Doe, deceased, inclusive.

VI.

That this action is brought by the plaintiff under the authority of [4] and in accordance with subparagraph (5) of Section No. 5d of the Reconstruction Finance Corporation Act (15 U.S.C. 601-617) as amended by the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress), and executive Order 9217, issued by the President of the United States on August 7, 1942, which Acts and Executive Order authorize the Reconstruction Finance Corporation to acquire and dispose of property deemed necessary for military, naval or other war purposes; that the public use for which the property hereinafter described is sought to be taken

is the establishment of a reservoir for the storing and conservation of natural gas.

VII.

That the "Requesting Officer" hereinbefore mentioned is Leo Neilson, Assistant Secretary of the Reconstruction Finance Corporation, an agency of the United States. That by letter to the Attorney General of the United States, dated September 19, 1942, said Requesting Officer requested the institution of this proceeding, for the purposes hereinabove and hereafter designated, on behalf of the Defense Plant Corporation, a Federal corporation, which is wholly owned and controlled by the above mentioned Reconstruction Finance Corporation.

IX.

That the estate or interest in the property hereinafter described which plaintiff, by this action, intends and seeks to take, acquire, condemn, [5] hold and own is the full fee simple title, subject, however, to existing easements for public utilities.

X.

That the property hereinabove mentioned, which is to be taken and condemned in this action, consists of those certain lots, pieces or parcels of land situated in the County of Los Angeles, State of California, described as follows, to wit:

Parcel One

That part of Tract No. 9809 as shown on map recorded in Book 145 of Maps, at pages 91 to 96, in-

clusive, in the office of the County Recorder of Los Angeles County covering:

Lots 7 to 14, inclusive, in Block 7; Lots 3 to 25, inclusive, in Block 8; all of Block 9; Lots 1 to 20, inclusive, in Block 10; all of Block 11; all of Block 12; all of Block 13; all of Block 14; all of Block 15; Lots 1 to 13, inclusive, and Lots 25 and 26 in Block 16; Lots 1 to 13, inclusive, and Lots 23 to 26, inclusive, in Block 17; Lots 12 to 21, inclusive, in Block 18; all of Block 19; all of Block 20; all of Block 21; all of Block 22; all of Block 23; all of Block 24; all of Block 25; all of Block 26; Lots 13 to 27, inclusive, in Block 27; all of Block 28; all of Block 29; all of Block 30; Lots 4 to 9, inclusive, in Block 31; all of Block 32; Lots 3 to 41, inclusive, in Block 33; Lots 17 to 51, inclusive, in Block 34; Lots 12 to 18, inclusive, in Block 35; Lots 40 to 53, inclusive, and Lot 114, in Block 36. [6]

XI.

That the urgency for obtaining immediate possession and exclusive use and control of the property herein sought to be taken is such that plaintiff has not been able to procure accurate information as to the various ownerships of the above described parcels of land; and for such reason plaintiff is not able to allege the names of the owners and claimants separately claiming interests in such separate parcels; that the defendants named in the caption of this complaint by true names are apparent and presumptive owners of some part or portion of the property herein sought to be acquired, and that the

defendants herein sued under fictitious names claim some right, title or interest in or to said property, or some part thereof; that plaintiff intends to and will prepare and file an amended complaint, setting forth said separate ownerships [9] and true names where ascertained, and prays leave of court to prepare, serve and file such amended complaint when the necessary information has been obtained by it.

XII.

That the defendant State of California is a corporation sovereign; that the defendant County of Los Angeles is a body politic, organized and existing under and by virtue of the laws of the State of California; that the defendant City of Los Angeles is a municipal corporation, organized and existing under and by virtue of the laws of the State of California.

XIII.

That under the provisions of the Second War Powers Act of 1942, approved March 27, 1942 (Public Law 507, 77th Congress), it is provided, in part, as follows:

“Upon or after the filing of the condemnation petition, immediate possession may be taken and the property may be occupied, used and improved for the purposes of the Act notwithstanding any other law;”

that by reason thereof the United States is entitled to immediate possession and use of the property herein sought to be condemned;

That the Assistant Secretary of the Reconstruction Finance Corporation, in a letter dated September 19, 1942, mentioned in Paragraph VII of this complaint, stated, in part, that it is vital to the successful prosecution of the war that the United States be granted the immediate right of possession of the hereinabove described property, and requested the securing by the United States of such right of immediate possession.

Wherefore, plaintiff prays judgment:

1. That the Court ascertain and assess the value of the property herein sought to be taken and condemned, and of each and every separate estate or interest therein;

2. Adjudging that the public uses for which plaintiff takes and condemns said lands are necessary public uses of the plaintiff, and that the uses to which said property are to be applied are uses authorized by law, and that all of the said lands so taken are necessary thereto; [10]

3. Vesting in the United States of America full fee simple title to the lands hereinbefore described, subject, however, to existing easements for public utilities, and adjudging that said lands shall be deemed to be condemned and taken for the use of the United States for the purposes and uses hereinbefore set forth; and further adjudging that the right to just compensation for the lands hereinbefore described be vested in the persons entitled thereto as their respective interests may appear and be established by judgment herein;

4. That an Order issue from this Court vesting the right to immediate possession in the plaintiff of the lands hereinbefore described and sought to be condemned in this action, and directing all parties in possession thereof to forthwith yield up possession of the same to the plaintiff;

5. That all liens or encumbrances of record against the property herein sought to be taken and condemned be satisfied out of the award to be made in this proceeding;

6. For such other and further relief as the Court deems meet and proper in the premises and as the nature of the case may require.

Dated: This 28 day of September, 1942.

/s/ LEO V. SILVERSTEIN,

United States Attorney.

IRL D. BRETT,

Special Assistant to the
Attorney General

FREDERICK H. STEINMETZ,

Special Attorney, Lands Division,
Department of Justice.

/s/ By FREDERICK H. STEINMETZ,
Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 28, 1942. [11]

[Title of District Court and Cause.]

ORDER FOR IMMEDIATE POSSESSION

Upon a reading of the complaint in the above entitled action, and upon application of Frederick H. Steinmetz, Special Attorney, Lands Division, Department of Justice, for an order granting immediate possession of the property described in said complaint, pursuant to the Second War Powers Act of 1942, approved March 27, 1942 (Public Law 507—77th Congress); and upon the testimony in open Court of George H. Pannell, Appraiser for Defense Plant Corporation, and Paul M. Lee, Examiner for Reconstruction Finance Corporation, and good cause appearing therefor:

It Is Hereby Ordered, Adjudged and Decreed that plaintiff, United States of America, is hereby granted the immediate possession of all of the hereinafter described property, excepting only those respective portions of the following lots occupied by the following persons or agencies: [12]

a. Residence of Mrs. Coppinger, at 8116 Delganey Avenue, Los Angeles, on Lot 16, Block 33, of Tract No. 9809, hereinafter described;

b. Pumping Plant and Reservoir of Palisades Del Rey Water Company, a corporation, on Lot 7, Block 15, of said Tract 9809;

c. Transformer Station of Bureau of Power and Light of the City of Los Angeles, located on Lots 1-6, inclusive, of Block 15, in said Tract 9809.

The property affected by this Order is more particularly described as follows: [13]

Those certain lots, pieces or parcels of land situated in the County of Los Angeles, State of California, described as follows, to-wit:

Parcel One

That part of Tract No. 9809 as shown on map recorded in Book 145 of Maps, at pages 91 to 96, inclusive, in the office of the County Recorder of Los Angeles County covering:

Lots 7 to 14, inclusive, in Block 7; Lots 3 to 25, inclusive, in Block 8; all of Block 9; Lots 1 to 20, inclusive, in Block 10; all of Block 11; all of Block 12; all of Block 13; all of Block 14; all of Block 15; Lots 1 to 13, inclusive, and Lots 25 and 26 in Block 16; Lots 1 to 13, inclusive, and Lots 23 to 26, inclusive, in Block 17; Lots 12 to 21, inclusive, in Block 18; all of Block 19; all of Block 20; all of Block 21; all of Block 22; all of Block 23; all of Block 24; all of Block 25; all of Block 26; Lots 13 to 27, inclusive, in Block 27; all of Block 28; all of Block 29; all of Block 30; Lots 4 to 9, inclusive, in Block 31; all of Block 32; Lots 3 to 41, inclusive, in Block 33; Lots 17 to 51, inclusive, in Block 34; Lots 12 to 18, inclusive, in Block 35; Lots 40 to 53, inclusive, and Lot 114 in Block 36. [14]

It Is Further Ordered that copies of this Order shall be delivered to each of the persons or agencies hereinabove specifically mentioned, and that the United States Marshal shall forthwith post in a

conspicuous place upon each of the oil derricks and tanks within the above described area, a notice, substantially as follows:

“NOTICE

To All It May Concern

Under the Second War Purposes Act, this property is taken by the United States of America for war purposes.

You enter upon this property at your own hazard.

UNITED STATES OF AMERICA
By Defense Plant Corporation”

Dated this 28th day of September, 1942, at 11:44 o'clock a.m.

C. E. BEAUMONT,
United States District Judge.

Presented by:

LEO V. SILVERSTEIN,
United States Attorney.

IRL D. BRETT,
Special Assistant to the
Attorney General.

FREDERICK H. STEINMETZ,
Special Attorney, Lands Division,
Department of Justice.

By FREDERICK H. STEINMETZ,
Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 28, 1942. [18]

[Title of District Court and Cause.]

DECLARATION OF TAKING No. 1

To the Honorable, the United States District Court:

For and on behalf of Reconstruction Finance Corporation, a corporation duly created by the United States of America, pursuant to 47 Stat., Chapter 8, Pages 5-12, approved January 22, 1932 (15 U.S.C. 601-617), as amended, it is hereby declared that:

1. The lands hereinafter described are hereby taken in the name of United States of America, your petitioner, for the purposes hereinafter stated, under and in accordance with sub-paragraph (5) of Section 5d of the Reconstruction Finance Corporation Act (15 U.S.C. 601-617) as amended by the Act of Congress, approved March 27, 1942 (Public Law 506, Seventy-seventh Congress 15 U.S.C. 606 b) which amendatory act authorized the acquisition of land in the name of United States of America, petitioner herein, upon application of Reconstruction Finance Corporation, pursuant to the provisions of the Act approved August 1, 1888 (25 Stat. 357) as amended, and Sections 1, 2 and 4 of the Act approved February 26, 1931 (46 Stat. 1421) as amended. [19]

2. It has been determined to be necessary and advantageous to the carrying out of the authority vested by Reconstruction Finance Corporation in Defense Plant Corporation, a corporation created pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended (47 Stat. Chap-

ter 8, Pages 5-12) to acquire the lands hereinafter described, in order to provide facilities for the storage of natural gas; and

3. A general description of the lands being taken is set forth in Exhibit "A," attached hereto and made a part hereof, and is a description of a portion of the lands described in the petition filed in the above entitled cause.

4. A plat showing the lands taken is attached hereto and made a part hereof, and is designated Exhibit "B."

5. The estate taken for said public uses is the absolute fee simple title thereto, subject, however, to existing easements for public utilities.

6. The sum estimated by Reconstruction Finance Corporation as just compensation for said lands with all buildings and improvements thereon and all appurtenances thereto, and including all interests hereby taken in said lands is fully set forth in Exhibit "A," attached hereto and made a part hereof, which sum has been duly authorized to be deposited, and the said sum herewith is deposited in the Registry of this Honorable Court, for the use and benefit of the persons entitled thereto.

In Witness Whereof, the petitioner has caused this declaration to be signed in its name by Reconstruction Finance Corporation, which has duly secured the executing of this declaration by its Assistant Treasurer, and its corporate seal to be affixed, and to be duly attested by its Assistant Secretary pursuant to authorization by the Board of

Directors, this 22nd day of October, 1942, in the City of Washington, District of Columbia.

[Seal]

RECONSTRUCTION FINANCE
CORPORATION

By H. L. SULLIVAN,

Assistant Treasurer.

Attest:

By M. C. MULLIGAN,

Assistant Secretary. [20]

EXHIBIT "A"

The lands which shall be the subject matter of this Declaration of Taking are situated in the City of Los Angeles, State of California, and are more fully described as follows:

Parcel One

That part of Tract No. 9809 as shown on map recorded in Book 145 of Maps, at pages 91 to 96, inclusive, in the office of the County Recorder of Los Angeles County covering:

Lots 7 to 14, inclusive, in Block 7; Lots 3 to 25, inclusive, in Block 8; all of Block 9; Lots 1 to 20, inclusive, in Block 10; all of Block 11; all of Block 12; all of Block 13; all of Block 14; all of Block 15; Lots 1 to 13, inclusive, and Lots 25 and 26 in Block 16; Lots 1 to 13, inclusive, and Lots 23 to 26, inclusive, in Block 17; Lots 12 to 21, inclusive, in Block 18; all of Block 19; all of Block 20; all of Block 21; all of Block 22; all of Block 23; all of Block 24; all of Block 25; all of Block 26; Lots 13 to 27, inclusive, in Block 27; all of Block 28; all of Block 29; all of Block 30; Lots 4 to 9, inclusive, in Block 31; all of Block 32; Lots 3 to 41, inclusive, in Block 33;

Lots 17 to 51, inclusive, in Block 34; Lots 12 to 18, inclusive, in Block 35; Lots 40 to 53, inclusive, and Lot 114 in Block 36.

Excepting Therefrom (1) pumping plant and reservoir of Palisades Del Rey Water Company, a corporation, in Lot 7, Block 15 of said Tract 9809; (2) transformer station of Bureau of Power and Light of the City of Los Angeles, located on Lots 1-6, inclusive, of Block 15 in said Tract 9809. [21]

ESTIMATED JUST COMPENSATION

Seven hundred forty thousand, four hundred sixty-nine dollars (\$740,469.00).

[Endorsed]: Filed Oct. 26, 1942. [22]

LANDS DIVISION ACQUISITION

Re: United States v. Certain Parcels of Land in County of Los Angeles, State of California, etc., et al. Civil No. 2454-B, Department of Justice Reference No. RJL-ICH 33-5-882.

Acquisition in behalf of the Reconstruction Finance Corporation, acting in behalf of Defense Plant Corporation.

To: August Weymann, a duly licensed and practicing attorney of the State of California admitted to practice in the Federal Courts of the Southern District of California and a duly appointed and qualified Special Attorney of the Department of Justice, Lands Division, assigned to the Los Angeles office of the Department of Justice and under the supervision of the undersigned.

Under and pursuant to the authority vested in me by letter from the Attorney General dated October 19, 1943, you are hereby appointed as co-counsel in the above entitled action and authorized and directed to appear as an attorney of record on behalf of the plaintiff in said case and to otherwise participate in the conduct of said cause and take any and all proceedings necessary and proper to conclude said action, including the entry of final judgment therein.

Done at Los Angeles, California, this 1st day of November, 1943.

/s/ IRL D. BRETT,

Special Assistant to the
Attorney General

[Endorsed]: Filed Dec. 3, 1943. [23]

(Department of Justice Seal)
Office of the Attorney General
Washington, D. C. (25)
March 31, 1944

Mr. Irl D. Brett
Special Assistant to the Attorney General
and

Mr. August Weymann
Special Attorney, Lands Division
Department of Justice
808 Federal Building
Los Angeles 12, California

Gentlemen:

You and each of you are hereby specially ap-

pointed, designated, directed, and empowered to appear as attorneys of record for and on behalf of the United States of America in the condemnation cases designated by Civil Numbers 2454-B, 3128-OC and 189-ND, pending in the District Court of the United States in and for the Southern District of California, Central and Northern Divisions, including all tracts therein.

You and each of you are further specially directed and empowered to prosecute to a conclusion the above-identified proceedings and to sign and file all pleadings, stipulations, and other documents therein which you or either of you from time to time may deem necessary or expedient.

I hereby ratify and confirm all acts heretofore taken by you or either of you in the above proceedings.

Respectfully,

FRANCIS BIDDLE,

Attorney General. [24]

[Title of District Court and Cause.]

SUBSTITUTION OF ATTORNEY

To the Above Entitled Court, and to the Attorneys
for the Defendants:

Please take notice that by written direction of the Attorney General dated June 5, 1944, filed with the Clerk of this Court on June 9, 1944, Eugene D. Williams, Special Assistant to the Attorney General,

is hereby substituted for and in the place and stead of Irl D. Brett, Special Assistant to the Attorney General, as attorney for the Plaintiff in the above entitled action.

Dated: June 9, 1944.

/s/ EUGENE D. WILLIAMS,
Special Assistant to the At-
torney General
Attorney for Plaintiff.

/s/ IRL D. BRETT,
Special Assistant to the
Attorney General.

So Ordered: Dated June 13th, 1944.
PAUL J. McCORMICK,
Judge.

[Endorsed]: Filed June 13, 1944. [25]

[Title of District Court and Cause.]

MOTION FOR LEAVE TO FILE AMENDED
COMPLAINT AND ORDER THEREON

Comes now the plaintiff in the above entitled action and moves the Court for leave to file its First Amended Complaint herein as and for its Complaint in said action, which said proposed First Amended Complaint is presented herewith.

Said motion is made upon the Affidavit of August Weymann, Special Attorney, Lands Division, De-

partment of Justice, verified the 11th day of January, 1944, the written Stipulation of Bodkin, Breslin and Luddy, the attorneys of record for the defendant Treasure Company, and the written Stipulation of Leland J. Allen, [26] the attorney of record for the defendants The Adamant Company, Walter B. Scoville and Harry Wynn.

Dated: January 12, 1944.

IRL D. BRETT,
Special Assistant to the
Attorney General

By A. WEYMANN,
Attorney for Plaintiff.

ORDER

Upon the motion of plaintiff for leave to file its First Amended Complaint herein, and good cause appearing therefor, and it appearing that the only parties entitled to notice of said motion have by written stipulation waived such notice,

It Is Ordered that the plaintiff have leave to file its First Amended Complaint presented on said motion.

Dated: January 12, 1944.

C. E. BEAUMONT,
United States District Court
Judge.

[Endorsed]: Filed Jan. 12, 1944. [27]

In the District Court of the United States, In and
For the Southern District of California, Central Division

No. 2454-B Civil

UNITED STATES OF AMERICA, for the use of
RECONSTRUCTION FINANCE CORPORATION, a Federal Corporation, acting in behalf of DEFENSE PLANT CORPORATION, a Federal Corporation,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE CITY
OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA; SAM
BLOCK,

Defendants.

FIRST AMENDED COMPLAINT

Comes now the plaintiff, United States of America, and upon leave of Court, first duly had and obtained, files this, its First Amended Complaint, on behalf, and at the request, of Reconstruction Finance Corporation, a Federal corporation, by its duly authorized officer, hereinafter referred to as the "Requesting Officer," and under the direction and by the authority of the Attorney General of the United States, and for cause of action against the above named defendants and each of them, complains and alleges:

I.

That the plaintiff is entitled, empowered and authorized to acquire by the exercise of the power of eminent domain, all of the property hereinafter described, for the uses and purposes hereinafter set forth.

II.

That pursuant to the provisions of the statutes hereinafter set forth the said Reconstruction Finance Corporation, by its said Requesting Officer for and in behalf of the United States, has determined that the property hereinafter described is suitable and necessary for the purposes of the United States, and has selected and designated such property for acquisition by the United States in these proceedings, and that said selection, designation, and determination ever since have been and now are, in full force and effect. That the purposes for which the plaintiff is taking said property, as hereinafter set forth, are necessary and constitute a public use, which use is authorized by law; that the acquisition of said property is and will be of greatest public benefit and to the least private injury; that plaintiff is informed and believes, and upon such information and belief alleges, that no part of said property has heretofore been appropriated to any public use; and, if any part or portion thereof has heretofore been so appropriated, the use to which said property is herein sought to be condemned and appropriated, is a more necessary and a paramount public use.

III.

That plaintiff is informed and believes, and upon such information and belief alleges, that the property described under each parcel number as hereinafter set forth, constitutes the whole of the parcel and not a part or portion of a parcel. [30]

VI.

That this action is brought by the plaintiff under the authority and pursuant to the provisions of the Act of Congress, approved January 22, 1932, (U.S.C. 601-617) as amended, and Public Law 507, 77th Congress, approved March 27, 1942, and Executive Order 9217, issued by the President of the United States [31] on August 7, 1942, by virtue of and pursuant to authority vested in him by Title II of the Second War Powers Act, 1942, approved March 27, 1942 (Public Law 507, 77th Congress), which acts and executive order authorizes the Reconstruction Finance Corporation to acquire by condemnation property deemed necessary for military, naval, or other war purposes.

VII.

That the public use for which the property hereinafter described is sought to be condemned and taken is the establishment of a reservoir for the storing and conservation of natural gas to relieve a shortage of gas which would impede the war effort; that the said Reconstruction Finance Corporation has determined that it is necessary for war purposes to acquire the property hereinafter described, for the establishment of the said reservoir.

VIII.

That the Requesting Officer hereinbefore mentioned is Leo Neilson, Assistant Secretary of the Reconstruction Finance Corporation; that said Reconstruction Finance Corporation is an agency of the United States; that by letter to the Attorney General of the United States, dated September 19, 1942, said Requesting Officer requested the institution of this proceeding for the purposes herein set forth, on behalf of the said Reconstruction Finance Corporation, and of Defense Plant Corporation, a Federal corporation; that said Defense Plant Corporation is an agency of, and is wholly owned and controlled by the aforesaid Reconstruction Finance Corporation.

That on September 18, 1942, said Reconstruction Finance Corporation, by a resolution duly adopted by its Board of Directors, resolved and determined that it was necessary for war purposes that the property, real, personal, and mixed, herein described, be acquired by condemnation, and that in connection therewith, the immediate right to occupy, use and improve said property be acquired; that its secretary or assistant secretary be authorized, and are authorized, and directed, to request the Attorney General of the United States to cause the necessary proceeding to be instituted for the condemnation and taking of said property, and further, to cause the necessary action to be taken to occupy, use, and improve said property, pursuant to the provisions of the Act of Congress, approved March 27, 1942 (Public Law 507—77th Con-

gress) and Executive [32] Order 9217, issued by the President of the United States, August 7, 1942, by virtue of and pursuant to authority vested in him by said Public Law 507, 77th Congress.

X.

That the estate or interest in the property hereinafter described which the plaintiff in this action intends and seeks to take, acquire, condemn, hold, and own is:

(a) The full fee simple title to the real property hereinafter described, subject, however, to existing easements for public utilities:

(b) Title to all the personal property and trade fixtures, hereinafter described, free and clear of all liens and encumbrances, located on said real property or on any part thereof, on the 28th day of September, 1942.

XI.

The real property hereinabove mentioned which is to be taken and condemned in this action consists of those certain lots, pieces, or parcels of land situated in the County of Los Angeles, State of California, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, together with all buildings, structures, works and fixtures located in or upon said parcels of land or any of them and which are a part of the said realty; said parcels of land are more particularly described as follows, to-wit: [33]

Parcel 87

Lots 2, 3, 4, 7, 8, 24 to 34 inclusive, 37 to 45 inclusive, Lot 35 except the East 20 feet thereof and Lot 36 except the West 20 feet thereof, Block 13 of Tract No. 9809 in the City of and County of Los Angeles, State of California, as per map recorded in Book 145 Pages 91 to 96 inclusive of Maps in the office of the County Recorder of said County.

Also all those portions of 83rd Street (formerly Salazar Drive) Gulana Avenue, Manchester Avenue and Saran Drive, to the centers thereof, which lie in front of said land. [34]

Parcel No. 103

Lots 1 to 24 inclusive in Block 14 of Tract No. 9809, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 145 Pages 91 to 96 inclusive of Maps in the office of the County Recorder of said County.

Also all those portions of Saran Drive, Manchester Avenue, Gulana Avenue, Talbert Avenue and Talbert Street (formerly Talbert Avenue), to the centers thereof, which lie in front of said lots.

XIII.

That the property which the plaintiff by this action intends and seeks to take, acquire, and condemn, hold and own, includes the following:

All pipe, machinery, appliances, equipment, tanks, structures, tools, supplies, and all other property, whether real or personal, which were located

in or upon any of the said tracts of land hereinabove described on the 28th day of September, 1942, and which on said day were used, or were useful, in the operation of any oil and/or gas wells, upon any of said parcels of land, or in the treating, storing, or disposing of the products of any of such wells.

XIV.

That plaintiff is unable to determine at this time how much of the property generally described in the last preceding paragraph is to be deemed part of the real property on which it is located, for the reason that plaintiff does not now know the terms of the oil and gas leases under which said property was placed upon the premises for the purpose of producing oil and gas therefrom; and plaintiff therefore designates all of said property as personal property and trade fixtures, solely for the purpose of identifying the same as part of the property to be taken in this proceeding, and will ask leave of Court to amend this complaint accordingly if and when it shall be ascertained that any of the property herein designated as personal property and trade fixtures is, in fact, part of the realty upon which it is located.

XV.

That an inventory of all of the property referred to and described in the last two preceding paragraphs hereof is filed with the Clerk of this Court for the inspection of any interested party, and the plaintiff will, upon demand, deliver a copy thereof to any party to this proceeding.

XVI.

That under the provisions of the Second War Powers Act of 1942, [36] approved March 27, 1942 (Public Law 507—77th Congress), it is provided, in part, as follows:

“Upon or after the filing of the condemnation petition, immediate possession may be taken and the property may be occupied, used and improved for the purpose of the Act notwithstanding any other law;”

that by reason thereof the United States is entitled to immediate possession and use of the property herein sought to be condemned;

That the Assistant Secretary of the Reconstruction Finance Corporation, in a letter dated September 19, 1942, mentioned in Paragraph VIII of this complaint, stated, in part, that it is vital to the successful prosecution of the war that the United States be granted the immediate right of possession of the hereinabove described property, and requested the securing by the United States of such right of immediate possession.

Wherefore, plaintiff prays judgment;

1. That the Court ascertain and assess the value of the property herein sought to be taken and condemned and of each and every separate estate or interest therein.

2. Adjudging that the public uses for which plaintiff takes and condemns said property are nec-

essary public uses of the plaintiff and that the uses to which said property are to be applied are uses authorized by law and that all of the said property so taken is necessary thereto.

3. Adjudging that the full fee simple title to the lands hereinbefore described is vested in the United States of America subject, however, to existing easements for public utilities; and further adjudging that title to all of the property, whether real, personal or mixed, used or useful in connection with the operation of any oil and/or gas wells upon any of said parcels of land or in the treating, storing or disposing of the products of any such wells is vested in the United States of America free and clear of all liens and encumbrances; and further adjudging that the right to just compensation for the lands and property hereinbefore described is vested in the persons entitled thereto, as their respective interests may appear and be [37] established by judgment herein.

4. That an order issue from this Court vesting the right to immediate possession in the plaintiff of the lands and property herein described and sought to be condemned in this action and directing all parties in possession thereof to forthwith yield up possession of the same to the plaintiff.

5. That all liens or encumbrances against any of the property sought to be taken and condemned herein be satisfied out of the award or awards to be made in this proceeding.

6. That the plaintiff have such other and fur-

ther relief as to the Court may seem just and proper in the premises and as the nature of the case may require.

IRL D. BRETT

Special Assistant to the
Attorney General

By /s/ IRL D. BRETT

Attorney for Plaintiff

[Endorsed]: Filed Jan. 12, 1944. [38]

[Title of District Court and Cause.]

EXHIBIT "C"

Inventory of the Property and Equipment Referred
to in Paragraphs XIII, XIV and XV of the
First Amended Complaint Filed Herein, and
Which is to be Acquired by Condemnation in
the Above Entitled Action. [39]

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Union Oil Company of California. Inventory of Materials and Supplies Taken Over by Defense Plant Corporation—September 29, 1942. Block Oil Company, 1055 S. La Brea St., Los Angeles, California.

Quantity	Description
----------	-------------

Block Oil Company No. 10

1	Buda Y R 425 Cly. Gas Engine
1	10" 8 Groove C Section Pulley (Reduction Gear)
1	8" 8 Groove C Section Pulley (Motor)
8	V Belts 3' centers
1	Westinghouse Reduction Gear
	Ratio 32.1 Serial N. 11597 Style SE 389
6'	3/4" Garden House
1	3/4 x 4" Nipple
1	1 x 3/4 Bushing

Quantity	Description
	Block Oil Company No. 10
1"	Collar
2	1" x Clo. Nipple
1	1" guick opening valve
4	1 x 4 Nipple
1	1" Street Ell
1	12" x 5' Gas Drip
1	1 x 6 Nipple
1	1" Fisher House Regulator
3	1" Std. Mall Ell
2	1" Clip Gate
1	1" Std. Mall Tee
1	1" x 24" Nipple
1	1" R R Union
50'	1" Line Pipe
1	Bowlers Crank w/12 weights
1	Emsco Pitman
1	Morgan Wrist Pin
1	24" Wood Walking Beam
15'	1030 Rotary Chain
1	1" x 48" Turo Buckle
1	16" x 16" Wood Sampson Post w/8" x 8" Brace
1	Ratigan Rocker
1	Horse Head unknown make
1	Ratigan Carrier Bar
1	Ratigan No. 50 Polish Rod Grip
22'	1 1/4" Wire Line Sling w/Babbit Ratigan "Is"
1	8" x 12" x 8" Chemical Tank
1	Manzel Treolite Pump w/check valve and sight glass
3	1/4" Stop cocks

Quantity	Description
Block Oil Company No. 10	
10	1/4" Copper Tubbing
2	1/4" Copper Tubbing Connection
1	3 x 12 Nipple
2	3" Std. Mall Ell
2	3" Std. Mall Tee
3	3 x 5 Nipple
1	3" Kew Union
10'	3" 8 T L Pipe
2	2 1/2 Gal. Foamite Ext.
2	2" x 6" Nipple
4	2" x 4" Nipple
2	2" L P Collar
1	2" Std. Mall Ell
2	2" x 12" Nipple
1	2" Std. Mall Tee
3	2" Std. Clip Gate
25'	2" Line Pipe
2	2" Std. Mall Tee
1	2" C I Plug
1	2" R R Union
1	2" Std. Brass Gate Valve
1	65/8 Baash Ross Tubing Head w/3" Side outlet 4" M Con. Top.
1	3" x 2" Bushing
1	1/4" x 4" Nipple
2	1/4" c Clo. Nipple
1	1/4" Brass Valve
1	1/4" Brass Stop Cock
1	3" x 6" Nipple
1	3" x 4" Nipple

Quantity	Description
	Block Oil Company No. 10
1	3" N.R.S. Sed. I.B.B.M. Gate Valve.
1	3" x 2" Swage
1	2" Collar
60	2" - 11½ T Line Pipe
3	2" x 4" Nipple
3	2" x 8" Nipple
2	2" Std. Mall Tee
1	2" x ½" Bushing
2	½" x 6" Nipple
1	½" Brass Clo Valve
2	2"Std. Mall Ells
1	2" R R Union
1	2" x 18" Nipple
1	2" Std. Brass Swing Ck. Valve
1	2" Collar
1	3" x 2" Swage Nipple
1	4" L P Collar
1	4" x 3" Swage
1	3" E H Mall Cross
1	3" x 1" Swage Nipple
1	1" Tee
2	1" x 4" Nipples
1	1" Clip Gate
1	1" x ½" Bushing
1	½" x ¼" Bushing
1	¼" Street Ell
1	3" Oil Well Imperial "C" Stuff. Box
32'	3" 8T Line Pipe
4	3" Kew Union
4	3" x 6" Nipples

Quantity	Description
	Block Oil Company No. 10
1	1" Tee
1	1" x 1½" Bushing
1	½" x 4" Nipple
1	½" Clip Gate
1	1" x Clo. Nipple
1	1" x 4" Nipple
1	1" Clip Gate
1	1" Std. Mall Ell
1	1" x 1½" Bushing
1	3" I.B.B.M. Swing Ck. Valve
1	3" Crane Std. N.R.S. Sed. Gate Valve
1	3" Std. Mall Tee
1	Trumble Gas Trop 20" w/D Slide Valve
1	2" Mall Ell
1	3" x 2" Swage
3	3" x 12" Nipples
3	3" Std. Mall Ell
1	4" x 3" Swage
1	3" Relief Valve
1	1" x 36" Turo Buckle
1	3" x 2" x 2" Mall Tee
1	3" x 2½" Swage Nipple
40'	2½" Line Pipe
1	2½" R. R. Union
1	2½" Std. Mall Ell
2	2" Std. Mall Ell
30'	2" - 11½" Line Pipe
1	2" Tee
1	2" x 1½" Bushing
2	½" x 6" Nipples

Quantity	Description
	Block Oil Company No. 10
2	1½" x 2" Nipples
1	1½" Tee
1	1½" Clip Gate
1	1½" Brass Glo Valve
1	1½" x ¼" Bushing
1	¼" Copper Tub Con
1	2" x 6" Nipple
1	2" Brass Glo Valve
2	2" x 1½" Bushing
1	1½" x 8" Nipple
1	1½" American Sec. Relief Valve
2	1½" x 4" Nipples
1	1½" Ell
1	2" R R Union
1	122' McClintock & Marshall Derrick 8 x 8 x 1½" Starting Legs, Straight Ladder, Run-around and Crows nest and wood finger
1	2" Sheave Prod. Crown
500'	1" Tubbing Line
200	½" Conduit Galv.
5	Reflectors 16"
8	½" Conduit outlets
550'	2½" Line Pipe T & C
1	2½" Mall Ell
1	2½" x 3" Swage
1	3" Kew Union
1	3" x 4" Nipple
1	3" L P Collar
1	4" x 3" Swage Nipple
1	4" Mall Tee

Quantity	Description
	Block Oil Company No. 10
1	4 x Clo Nipple
1	4" Clip Gate
1	6" x 4" Swage
1	6" Tank Flange
1	4" x 2" Swage
6	2" Clip Gates
11	2" x 6" Nipples
5	2" Mall Tees
13	2" Mall Ells
2	2" L P Collars
300'	2" Line Pipe
10	2" R R Unions
1	2 x Clo Nipple
1	2" x 8" Nipple
4	2" x 10" Nipples
1	2" 45 Ell
1	2" Tank Flag
2	1½" Tank Flanges
2	1½" Brass Glo Valves
2	1½" x 4" Nipples
1	1½" x 12" Nipple
1	1½" Street Ell
1	1½" Mall Ell
50	3" 8 T L Pipe
1	3" Mall Ell
1	2" Kew Union
1	2" CI Plug
1	Burros Dehydroating Heater 31" Dia x 6' high w/Stock
1	6" Rapid Tank Flange

Quantity	Description
	Block Oil Company No. 10
1	6" x 4" Swage
1	4" N R S I.B.B.M. Gate Valve
1	4 x Clo Nipple
2	4" Ell Mall
1	4" x 6" Nipples
60'	4" 8T Line Pipe
1	4" x 3" Swage
1	3" Clip Gate
10'	3" 8T Line Pipe
1	3" Bull Plug
1	3" Tank Flange
1	3" x 2" Swage
1	2" Clip Gate
1	2" x 8" Nipple
40'	4" 8T Line Pipe
1	4" Mall Tee
1	4" Mall Ell
2	4" x 3" Swages
2	3" Collars
80'	3" 8T Line Pipe
6	3" Mall Ells
8	3" x 4" Nipples
2	3" Kew Unions
2	3" Mall Tees
2	3" Clip Gates
2	3" Bull Plugs
4950'	3/4" Sucker Rods
1500'	7/8" Sucker Rods
6487'	2 1/2" 10-thread upset tubing
6275'	7" casing

Quantity	Description
	Block Oil Company No. 10
306'	5 $\frac{3}{4}$ " liner
1	16" Gaso Pump & Burner Co. vacume compressor Cyl. operated by Walking Beam 3" Suction 2" Discharge
10'	1240 Rotary Chain
2	2-3 Reag. 600 Boe Boiler Tanks
2	4" Rapid Tank Flanges

[Endorsed]: Filed January 20, 1944. [45]

[Title of District Court and Cause.]

AMENDED ANSWER OF SAM BLOCK

Comes now Sam Block, and upon stipulation and with leave of court first had, and files this, his amended answer to the amended complaint and admits, denies and alleges as follows, to wit:

I.

Answering the allegations of Paragraph 7, denies that on September 18, 1942, said Reconstruction Finance Corporation by resolution duly adopted or otherwise by its Board of Directors, resolved and determined that it was necessary for war purposes that the personal and mixed property in said complaint be acquired by condemnation, or that in connection therewith, the immediate right to take, use or improve said personal or mixed property be acquired, and denies that there was an authorization or direction to request the Attorney General of the

United States to cause the necessary proceeding to be instituted for the condemnation and taking of said personal or mixed property, and in this connection further alleges that no resolution, authorization or direction to take, acquire or use the personal or mixed property described [46] in said complaint was enacted or became effective until on or about October 24, 1943.

II.

Answering the allegations of paragraph IX, this answering defendant admits that he claims to have some right, title and interest in and to a portion of the property described in paragraph XI of said First Amended Complaint and designated therein as Parcel 87 and Parcel 103, and in this connection alleges that this answering defendant is the owner of a valid and subsisting oil and gas lease covering a portion of said real property; that the real property embraced by said oil and gas lease, and upon which the oil wells owned by this answering defendant are situate, is more particularly described as follows:

All of Lot 37 and the Southerly 103.1 feet of Lots 38, 39, 40 and 41, of Block 13, and the North 67.78 feet of Lots 1, 2, 3, 4, and 5, Block 14; all of Lots 7 and 8, and the East 45 feet of Lot 31; all of Lots 32, 33, and 34; the West 30 feet of Lot 35, and the East 30 feet of Lot 36; all in Block 13; all in Tract 9809, as per map recorded in Book 145, pages 91 et seq., of Maps, in the office of the County Recorder of Los Angeles County;

that the reasonable value of said leasehold interest of the defendant, as of September 28, 1943, the date of the taking of possession thereof by the plaintiff, was the sum of \$35,000 and that by reason of the taking of said property by plaintiff, this defendant has been damaged in the sum of \$35,000. This answering defendant further alleges that he is also the owner of certain overriding royalty interests entitling this defendant to receive 10 7/12% of the gross oil, gas and other hydrocarbon substances saved, produced and sold from the well, formerly known as "Colly Oil Well No. 1" and now known as "Block Well No. 10", situate on said real property hereinabove described; that the reasonable value of said royalty interest owned by this defendant as of said date was the sum of \$6,500; that by reason of the taking of said property by plaintiff, this defendant has been damaged in the sum of \$6,500. This answering defendant further alleges that he is also the owner of certain personal property and trade fixtures affixed to or used in connection [47] with the operation of said oil well known as Block Well No. 10 and located on said above described real property; that the reasonable value of said personal property and trade fixtures so owned by the defendant as of October 24, 1943, the date of a resolution of the Reconstruction Finance Corporation authorizing the taking of said property and mixed property, and as of the 12th day of January, 1944, the date of the filing of the Amended Complaint herein, was the sum of \$20,401.01, and that by reason of the taking of the

said property by plaintiff this defendant has been damaged in the sum of \$20,401.01.

Wherefore, defendant prays that he do have and recover the sum of \$61,901.01, together with such interest thereon as is allowed by law for the taking of said hereinabove described real property and the interests of this answering defendant therein, and for such other and further relief as the Court may grant.

RAPHAEL DECHTER

By /s/ B. L. HOYT

Attorney for answering Defendant [48]

United States of America,
Southern District of California,
Central Division—ss.

Sam Block being by me first duly sworn, deposes and says: that he is the defendant in the above entitled action; that he has read the foregoing Amended Answer of Sam Block and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

SAM BLOCK

Subscribed and sworn to before me this 25th day of June, 1945.

[Seal]

HARRY A. PINES

Notary Public in and for the County of Los Angeles, State of California

[Endorsed]: Filed June 29, 1945. [49]

In the District Court of the United States, in and
for the Southern District of California, Central
Division

No. 2454-B Civil

UNITED STATES OF AMERICA, for the Use
of RECONSTRUCTION FINANCE COR-
PORATION, a Federal Corporation, Acting
in Behalf of DEFENSE PLANT CORPORA-
TION, a Federal Corporation,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE CITY
OF LOS ANGELES, COUNTY OF LOS
ANGELES, a Municipal Corporation, et al.,
Defendants.

JUDGMENT UPON THE VERDICT

(As to the Interest of the Defendant Sam Block)

The above entitled cause came on regularly for
trial before the above entitled Court, the Honorable
Campbell E. Beaumont, Judge presiding, on July
24, 1945, for determination and adjudication of the
just compensation to be paid by the United States
of America for the condemnation and taking of the
leasehold estate of the defendant Sam Block, in-
cluding all the production facilities and equipment
used in the operation of the producing oil and gas
well on said property, formerly known as Colly Oil
Well No. 1 and now known as Block Well No. 10,
as of September 28, 1942, as hereinafter set forth,

and the just compensation to be paid for the condemnation and taking of certain overriding royalty interests entitling the defendant Sam Block to receive 10 $\frac{7}{12}$ % of the gross oil, gas, and other hydrocarbon substances saved, produced, and sold from said leasehold estate, the plaintiff appearing by Eugene D. Williams, [66] Special Assistant to the Attorney General, and August Weymann and Arch G. McLay, Special Attorneys, Lands Division, Department of Justice, as its attorneys, and the defendant Sam Block appearing by and through his attorneys, Raphael Dechter and B. L. Hoyt.

A jury of twelve persons was regularly empanelled and sworn to try said action, and evidence, both oral and documentary, was introduced by and on behalf of the plaintiff and by and on behalf of the said defendant on the issues before the Court and jury; the case was argued and the jury instructed by the Court, and the cause thereafter submitted to the jury, and the jury thereupon rendered its verdict in the form and manner as follows, to wit:

“We, the Jury in the above-entitled case, find the market value as of September 28, 1942, of the leasehold estate of the defendant Sam Block, including all the production facilities and equipment used on said date in the operation of the well, to be the sum of \$20,397.00.

“We further find the market value as of September 28, 1942, of the 10 $\frac{7}{12}$ per cent overriding royalty of the defendant Sam Block to be the sum of \$1,857.00.

“Total market value of the foregoing as of September 28, 1942, is \$22,254.00.

“Dated: Los Angeles, California, July 31, 1945.

“ALBERT E. WILSON

“Foreman of the Jury”

And it appearing that on October 26, 1942, pursuant to the provisions of Title 40, Sec. 258(a) U.S.C.A., the plaintiff filed herein its Declaration of Taking, which included the leasehold estate, together with the producing oil and gas well thereon, of the said defendant, and which are hereinafter more particularly described, and that concurrently with the filing of said Declaration of Taking plaintiff deposited in the Registry of this Court, as the estimated just compensation for the taking and condemnation of all of the property [67] in said Declaration of Taking described, and of which said leasehold estate constituted a part, the sum of \$740,469.00.

And it further appearing that at the time of the filing of the within action, to wit, September 28, 1942, and at the time of the filing of the Declaration of Taking aforesaid, the defendant Sam Block was the owner of the said leasehold estate, together with all the production facilities and equipment used on said date in the operation of the producing oil and gas well located thereon, and entitled to the compensation to be paid for the condemnation and taking thereof,

It Is, Therefore, Ordered, Adjudged and Decreed, as follows:

I.

That the plaintiff is ordered and directed to pay to the defendant Sam Block, as the just compensation for the condemnation and taking by the plaintiff, United States of America, of the leasehold estate of the defendant Sam Block, hereinafter more particularly described, including all of the production facilities and equipment used on September 28, 1942, in the operation of said well and on said date owned by the defendant Sam Block, the sum of \$20,397.00; and the plaintiff is further ordered and directed to pay to the defendant Sam Block, as the just compensation for the condemnation and taking by the plaintiff, United States of America, of the 10 7/12% overriding royalty owned by the defendant Sam Block on September 28, 1942, the further sum of \$1,857.00.

II.

That all right, title, interest, claim, and estate of any character whatsoever in, to, or under the oil and gas lease and subleases hereinafter described, together with all the production facilities and equipment located in or on Block Well No. 10 or used in connection therewith on September 28, 1942, are divested from and out of the defendant Sam Block, and an unencumbered title thereto and the whole thereof, and all interests therein, are vested in the United States of America, its successors or assigns; and all valid liens and claims of whatsoever nature

or description against the said real and personal property are transferred from said real and personal property to the [68] compensation herein adjudged to be paid to the defendant Sam Block, to the end that the United States of America will take an unencumbered title to all of said property, whether real or personal, free and discharged of all liens whatsoever.

III.

That the property affected by this judgment is located in the City of Los Angeles, County of Los Angeles, State of California, and is described as follows:

(a) An oil and gas sublease executed by H. G. Spengler as sublessor to Colly Oil Company as sublessee, dated March 8, 1935, recorded March 9, 1935, in Book 13343, at Page 46 of Official Records, Los Angeles County, and affecting all of Lots 7 and 8 and the Easterly 45 feet of Lot 31. All of Lots 32, 33, 34 and the Westerly 30 feet of Lot 35, and the Easterly 30 feet of Lot 36, all in Block 13 of Tract 9809.

(b) An oil and gas sublease made by H. G. Spengler as sublessor to Colly Oil Company as sublessee, dated February 26, 1935, recorded March 9, 1935, in Book 13329, at Page 93 of Official Records, affecting all of Lot 37 and the Southerly 103.1 feet of Lots 38, 39, 40 and 41 in Block 13, and the Northerly 67.78 feet of Lots 1, 2, 3, 4 and 5 of Block 14, all in Tract 9809.

(c) All the right, title, and interest acquired by

the defendant Sam Block under that certain assignment from H. G. Spengler as assignor to Colly Oil Company as assignee, dated July 20, 1935, recorded August 5, 1935, in Book 13618, at Page 10, of Official Records of Los Angeles County.

(d) All the personal property, production facilities, and equipment which, on September 28, 1942, were owned by the defendant Sam Block and which were located in or [69] upon the property affected by the above described oil and gas subleases, or either of them.

IV.

That the Court retains jurisdiction of this cause for the purpose of entering such further orders or decrees as may be necessary or proper in the premises, including the adjudication of the rights of any claimants in or to the compensation to be paid by the plaintiff in satisfaction of the awards herein made.

Dated: This 17th day of September, 1945.

C. E. BEAUMONT

United States District Judge

Presented by:

EUGENE D. WILLIAMS

Special Assistant to the At-
torney General

AUGUST WEYMANN

ARCH G. McLAY

Special Attorneys, Lands
Division, Department of
Justice

By A. WEYMANN

Attorneys for Plaintiff

Approved as to form:

By RAPHAEL DECHTER

Attorneys for Defendant Sam
Block

Judgment entered Sept. 17, 1945. Docketed Sept. 17, 1945. C. O. Book 34, Page 726. Edmund L. Smith, Clerk. By R. B. Clifton, Deputy.

[Endorsed]: Filed Sept. 17, 1945. [70]

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

(As to the Interest of Defendant Sam Block)

Comes Now the plaintiff, United States of America, in the above entitled cause, and moves this Court for an order setting aside the verdict of the Jury heretofore rendered herein, vacating the judgment heretofore entered upon said verdict on September 17, 1945, and granting to plaintiff a new trial in the above entitled action as to the Judgment Upon the Verdict therein in favor of the defendant Sam Block, as to the market value as of September 28, 1942, of the leasehold estate of the defendant Sam Block, including all of the production facilities and equipment used on said date in the operation of the oil well known as Block Well No. 10, upon the following grounds and for the following reasons, to wit:

1. Excessive damages appearing to have been given under the influence of passion or prejudice;

2. Insufficiency of the evidence to justify the verdict in the following particulars, to wit, that the evidence does not justify a finding of a fair market value of \$20,397.00 as of September 28, 1942, of the leasehold estate of the defendant Sam Block, including all of the production facilities and equipment used on said date in the operation of Block Well No. 10;

3. That the verdict is against law;

4. Error in law occurring at the trial and excepted to by the plaintiff in the following particulars, to wit:

(a) That defendant was permitted to introduce evidence of the market value of the production facilities and equipment used to produce Block Well No. 10 separately and in addition to the market value of said well through the use of said production facilities and equipment;

(b) In the refusal of the Court to strike out the testimony of the witnesses Block, Rubin and Rush as to the value of the oil well producing equipment and facilities used to produce Block Well No. 10 separately and apart from the valuation of said well as an operating unit.

This motion is made pursuant to the provisions of Section 657 of the Code of Civil Procedure of the State of California; Title 28, Section 391, U. S. Code, and Rule 59 of the Federal Rules of Civil

Procedure, in so far as said provisions of law and rules of procedure are applicable to condemnation proceedings prosecuted within the State of California; said motion will be based upon the pleadings and papers on file in this proceeding, the exhibits offered and received in evidence, the Minutes of the Court, and the official Court Reporter's transcript of the testimony upon the trial.

Dated: September 21, 1945.

EUGENE D. WILLIAMS

Special Assistant to the At-
torney General

AUGUST WEYMANN

Special Attorney, Lands Div.,
Dept. of Justice.

By EUGENE D. WILLIAMS

Attorneys for Plaintiff [72]

Receipt of a copy of the within Motion for a New Trial is hereby acknowledged, this 21st day of September, 1945.

RAPHAEL DECHTER

B. L. HOYT

By R. DECHTER

Attorneys for Defendant
Sam Block.

[Endorsed]: Filed Sept. 21, 1945. [73]

Beaumont

Los Angeles

TUESDAY, OCTOBER 2, 1945

Court convenes at 9 o'clock a.m.

Present: The Honorable Campbell E. Beaumont, District Judge; R. B. Clifton, Deputy Clerk; Sam Goldstein, Court Reporter.

[Title of Cause.]

This cause coming on for further hearing on motion of plaintiff, filed September 21, 1945, for a new trial as to interest of defendant Sam Block; August Weymann, Esq., Special Attorney, Lands Division, Dep't of Justice, appearing as counsel for the Government; Raphael Dechter and B. L. Hoyt, Esqs., appearing as counsel for Defendant Sam Block:

Attorney Weymann continues argument; Attorney Dechter argues; and Attorney Weymann argues further. The Court denies motion for a new trial.

[Title of District Court and Cause.]

MOTION TO MODIFY AND AMEND JUDGMENT ON VERDICT TO INCLUDE INTEREST ON AWARD

To the Plaintiff Above Named, and to Eugene D. Williams. Special Assistant to the Attorney General, and to August Weymann and Arch G. McLay, Special Attorneys, Lands Division, Department of Justice:

You and Each of You will please take notice that the defendant, Sam Block, will, on the 10th day of

December, 1945, before the Hon. Campbell E. Beaumont, Judge of the above entitled court, at the hour of 10:00 o'clock a.m., on or soon thereafter as counsel can be heard, move said Court to modify and amend the judgment upon the verdict heretofore signed and entered on the 17th day of September, 1945, so as to include interest on the amount of said award and verdict at the rate of 6% per annum from the 28th day of September, 1942, being the date of the seizure and taking of possession of the said defendant's property by the plaintiff, or from such other time [75] and upon such other sum as the Court may deem meet and just in the premises.

Said motion will be made upon the ground that the plaintiff did, pursuant to Sec. 258a, Title 40, U.S.C.A., deposit certain moneys with the registry of said Court to the use of the persons entitled thereto and that no allocation of any portion of said amount so deposited upon the taking of the properties of the defendant, Sam Block, in the above proceedings was made by the plaintiff upon said deposit, and upon the further ground that the plaintiff has refused to allocate or pay to said defendant for the taking of said property any sum in excess of \$7,500.00, and upon the further ground that a judgment upon the verdict has heretofore been entered on the 17th day of September, 1945, awarding said defendant, Sam Block, the sum of \$22,254.00 as and for the just compensation for the property of said defendant, Sam Block, taken by the plaintiff on said 28th day of September, 1942.

Said motion will be based upon said judgment, upon the verdict heretofore entered in and about the above entitled action, and upon the records, files and proceedings heretofore had in and about said above entitled action.

DECHTER, HOYT, PINES &
WALSH

By B. L. HOYT

Attorneys for Defendant Sam
Block

[Endorsed]: Filed Nov. 21, 1945. [76]

Los Angeles

Beaumont

WEDNESDAY, DECEMBER 19, 1945.

Court convenes at 1:45 o'clock p.m.

Present: The Honorable Campbell E. Beaumont, District Judge; R. B. Clifton, Deputy Clerk; Agnar Wahlberg, Court Reporter.

[Title of Cause.]

This cause coming on for hearing motion of defendant Sam Block to modify and amend judgment on verdict to include interest on award, pursuant to notice filed November 21, 1945; A. Weymann, Esq., Attorney, Lands Division, Department of Justice, appearing as counsel for the Government, states that counsel have agreed to submit motion. It is ordered that the said motion of defendant Sam Block to modify and amend judgment on verdict to include interest on award is denied. [78]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS FROM JUDGMENT

(As to the Interest of the Defendant Sam Block)

Notice is hereby given that the United States of America, the plaintiff above-named, appeals to the Circuit Court of Appeals for the Ninth Circuit from the Judgment entered upon the Verdict in this action on September 17, 1945, in favor of the defendant Sam Block.

Dated: December 28, 1945.

/s/ EUGENE D. WILLIAMS

Special Assistant to the Attorney General, Attorney
for Plaintiff, United States of America

[Endorsed]: Filed Dec. 28, 1945. [79]

ORDER

Upon the annexed affidavit of August Weymann, verified January 22, 1946, and good cause appearing therefor,

It Is Ordered, that the time for the plaintiff to file its record on appeal herein be, and the same hereby is, extended to and including March 1, 1946.

Dated: This 22nd day of January, 1946.

C. E. BEAUMONT

United States District Judge

[Endorsed]: Filed Jan. 22, 1946. [80]

ORDER

Upon the annexed affidavit of August Weymann, Special Attorney, Lands Division, Department of Justice, and one of the attorneys of record for the plaintiff, the appellant herein, and good cause appearing therefor,

It Is Ordered, that the time for filing record on appeal herein under plaintiff's notice of appeal filed herein on December 28, 1945, be and the same hereby is extended to and including March 25, 1946.

Dated: This 28th day of February, 1946.

C. E. BEAUMONT,

United States District Judge

[Endorsed]: Filed March 1, 1946. [81]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL
FROM JUDGMENT ENTERED SEPTEMBER 17, 1945

In accordance with Rule 75 of the Federal Rules of Civil Procedure, the plaintiff, United States of America, hereby designates all of the following portions of the record, proceedings, and evidence in the case to be contained in the record on its appeal from the judgment entered herein September 17, 1945, in favor of the defendant Sam Block:

1. Original Complaint, omitting therefrom the names of all defendants except "Certain Parcels of Land in the City of Los Angeles, County of Los

Angeles, State of California; Doe One to Doe Two Thousand," and omitting Paragraph VIII thereof, [82] and omitting from Paragraph X thereof all parcel descriptions therein contained except the description of "Parcel 1." Filed September 28, 1942.

2. Order for Immediate Possession, omitting therefrom the description of all parcels therein contained except "Parcel 1." Filed September 28, 1942.

3. Declaration of Taking No. 1, omitting therefrom the descriptions of Parcel 2, Parcel 3, Parcel 4, Parcel 5, Parcel 6, and Parcel 7, as set forth in Exhibit A attached thereto. Filed October 26, 1942.

4. Letter of Authority from Irl D. Brett to August Weyman. Filed December 3, 1943.

5. Letter of Authority from Francis Biddle, Attorney General, to Irl D. Brett and August Weymann. Filed April 27, 1944.

6. Substitution of Attorneys for the United States. Filed June 13, 1944.

7. Motion and Order for filing First Amended Complaint. Filed January 12, 1944.

8. First Amended Complaint, omitting from the caption thereof the names [83] of all defendants except Sam Block, and further omitting Paragraphs IV, V, and IX thereof, and omitting from Paragraph XI thereof, beginning on Page 16 to and including Page 115, all of the parcel descriptions except the parcel descriptions of Parcels 87 and

103, which appear, respectively, on Pages 44 and 51; and omitting Paragraph XII thereof, beginning on Page 115 to Page 130, inclusive. Filed January 12, 1944.

9. Title page, index page, and numbered pages 1 to 5, both inclusive, of Inventory of Property and Equipment. Filed January 20, 1944.

10. Amended Answer of Sam Block to First Amended Complaint. Filed June 29, 1945.

11. Judgment Upon the Verdict. Filed September 17, 1945.

12. Motion for a New Trial by plaintiff. Filed September 21, 1945.

13. Minute Order denying new trial. Filed October 2, 1945.

14. Motion of Defendant Block to Amend Judgment (omitting therefrom defendant's Points and Authorities endorsed thereon). Filed November 21, 1945.

15. Minute Order denying Motion of Defendant Sam Block to modify and amend Judgment. Filed December 19, 1945. [84]

16. Reporter's Transcript of Proceedings, all of Pages 1 to 481, both inclusive, being Volumes 1 to 6, inclusive, of the transcript.

17. Reporter's Transcript of Proceedings on Motion for a New Trial, October 1 and October 2, 1945, Pages 1 to 59, both inclusive.

18. Plaintiff's Exhibits 1 to 4, 5, 6, 7, 8, and 9, both inclusive, in evidence.

19. Defendant's Exhibit B in evidence.

20. Plaintiff's Exhibit 3 for identification.

21. Order Enlarging Time to File Record on Appeal. Filed January 22, 1946.

22. Order Enlarging Time to File Record on Appeal (No. 2). Filed March 1, 1946.

23. This designation.

Plaintiff and appellant will apply to the District Court for an order to send to the Appellate Court plaintiff's original Exhibits 6 and 9 in lieu of copies thereof. [85]

Annexed hereto and served with this designation is a statement of the points on which the plaintiff intends to rely on its appeal.

Dated: This 15th day of March, 1946.

/s/ EUGENE D. WILLIAMS,

Special Assistant to the Attorney General, Attorney
for Plaintiff and Appellant, United States of
America.

[Endorsed]: Filed March 20, 1946. [86]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH PLAINTIFF INTENDS TO RELY ON APPEAL FROM JUDGMENT IN FAVOR OF DEFENDANT SAM BLOCK, ENTERED SEPTEMBER 17, 1945.

I.

The District Court erred in admitting evidence of the market value of operating facilities and equipment on Block's Well No. 10, separate from the value of the well as an operating property.

II.

The District Court erred in admitting evidence of the market value of the operating facilities and equipment on Block's Well No. 10, as a separate element of value, apart from and in addition to the value of the well as an operating property. [87]

III.

The District Court erred in denying appellant's motion to strike and to instruct the jury to disregard, all testimony as to the market value, as of October 4, 1943, of any oil or gas production equipment and facilities, which on September 28, 1942, were located on the leasehold property of the defendant Block and were then used by him in the production of oil and gas from Block's Well No. 10.

IV.

The District Court erred in excluding from evi-

dence plaintiff's exhibit numbered 3 for identification.

V.

The verdict of the jury is not supported by the competent evidence.

VI.

The verdict of the jury is not supported by substantial evidence.

VII.

The District Court erred in denying appellant's motion for a new trial.

Dated: This 15th day of March, 1946.

/s/ EUGENE D. WILLIAMS,
Special Assistant to the Attorney General, Attorney
for Plaintiff and Appellant, United States of
America.

[Endorsed]: Filed Mar. 20, 1946. [88]

[Title of District Court and Cause.]

STIPULATION RE RECORD ON APPEAL,
BLOCK'S LEASE

It Is Hereby Stipulated and Agreed, by and between the attorneys for the plaintiff-appellant and the attorneys for the defendant-appellee Sam Block, that

1. Plaintiff's designation of the record on appeal

contains all of the records, proceedings and evidence in the case to be contained in the record on appeal;

2. That in lieu of the whole of plaintiff's Exhibit No. 7, only the paragraphs numbered 17 and 22 thereof need be certified to the Appellate Court for inclusion in the record;

3. That those portions of the record designated by plaintiff, which are deleted by blue pencil in the copies herewith delivered to the Clerk of the District Court, need not be certified to the Appellate Court [89] nor included in the printed record on appeal.

4. That the transcript of the record, as modified by this stipulation, and herewith delivered to the Clerk of the District Court, together with the reporter's transcript of the proceedings had in the District Court, as designated by the plaintiff, will constitute a true transcript of the record of the District Court on the appeal in the above entitled matter as agreed on by the parties; and the Clerk of the said District Court may so certify, including this stipulation as part of such record.

Dated: This 20th day of March, 1946.

/s/ EUGENE D. WILLIAMS,
Special Assistant to the Attorney General, Attorney
for Plaintiff-Appellant.

DECHTER, HOYT, PINES &
WALSH,

By /s/ B. L. HOYT,
Attorneys for Defendant Sam Block, Appellee.

[Endorsed]: Filed Mar. 20, 1946. [90]

[Title of District Court and Cause.]

AFFIDAVIT AND ORDER THEREON RE
SENDING ORIGINAL EXHIBITS TO
APPELLATE COURT ON APPEAL—
(BLOCK'S LEASE.)

State of California,
County of Los Angeles—ss.

August Weymann, being first duly sworn, deposes
and says:

That he is a Special Attorney in the Lands Division, Department of Justice, having immediate charge of the above entitled proceeding, and is familiar with the facts hereinafter set forth;

That plaintiff has taken an appeal from the Judgment Upon the Verdict to the Circuit Court of Appeals, Ninth Circuit, and has designated as part of the record to be certified to the Appellate Court plaintiff's Exhibits 6 and 9 in evidence on the trial of the case;

That plaintiff's Exhibit 6 is a large map of the area included in the condemnation proceeding, approximately 48x54 inches, showing the [91] subdivided area on which various oil leases, including that of the defendant Block, were located; that by reason of the size of this map, it is not practicable to have it reduced for printing in the record so as to make it legible;

That plaintiff's Exhibit 9 is a production graph showing the decline of production from the subject well, which was used and introduced for illustra-

tive purposes only; that only the original of this graph is in existence, and the same reasons which make the reproduction of plaintiff's Exhibit 6 in the printed record impracticable apply to it.

Wherefore, affiant prays an order of the Court, pursuant to Rule 75(i) of the Federal Rules of Civil Procedure, authorizing and directing the Clerk of this Court to transmit to the Clerk of the Circuit Court of Appeals, Ninth Circuit, at San Francisco, California, the original plaintiff's Exhibits 6 and 9 in lieu of copies thereof with the record on appeal, with the request to the Clerk of said Circuit Court of Appeals to return the same to the Clerk of this Court after the disposition of the appeal.

A. WEYMANN.

Subscribed and sworn to before me this 19th day of March, 1946.

(Seal) ARCH G. McLAY,
Notary Public in and for Said County and State.

My commission expires: 11-27-49.

ORDER

Upon the foregoing affidavit of August Weyman, verified the 19th day of March, 1946, and good cause appearing therefor, it is so ordered.

Dated: This 19th day of March, 1946.

/s/ PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Filed Mar. 19, 1946.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 92 inclusive contain full, true and correct copies of Complaint in Condemnation as modified by stipulation of counsel; Order for Immediate Possession as modified by stipulation of counsel; Declaration of Taking No. 1 as modified by stipulation of counsel; Letters of Authority dated November 1, 1943 and March 31, 1944 respectively; Substitution of Attorney; Motion for Leave to File Amended Complaint and Order Thereon; First Amended Complaint as modified by stipulation of counsel; Title page, index page and pages numbered 1 to 5 inclusive of Inventory of Property and Equipment; Amended Answer of Sam Block; Plaintiff's Exhibits 1, 2, 3, 4, 5, Paragraphs 17 & 22 of Exhibit 7, and 8; Defendant's Exhibit B; Judgment upon the Verdict; Motion for a New Trial; Minute Order Entered October 2, 1945; Motion to Modify and Amend Judgment on Verdict to Include Interest on Award; Minute Order Entered December 19, 1945; Notice of Appeal; Two Orders Extending Time to File Record and Docket Appeal; Designation of Record on Appeal; Statement of Points on Appeal; Stipulation re Record

on Appeal and Affidavit and Order for Transmission of Exhibits which, together with Original Plaintiff's Exhibit 6 and 9, and copy of Reporter's Transcript, transmitted herewith constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 22nd day of March, A. D. 1946.

[Seal]

EDMUND L. SMITH,

Clerk

By THEODORE HOCKE

Chief Deputy Clerk

In the District Court of the United States for
the Southern District of California, Central
Division

Honorable Campbell E. Beaumont, Judge Pre-
siding (and jury).

No. 2454-B—Civil

UNITED STATES OF AMERICA, ETC.,
Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE
CITY OF LOS ANGELES, COUNTY OF
LOS ANGELES, STATE OF CALIFORNIA,
ETC., et al.,

Defendants.

REPORTERS' TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California

Tuesday, July 24, 1945

Appearances: For the Plaintiff: August Wey-
mann, Esq., and Arch G. McLay, Esq., Special
Attorneys, Lands Division, Department of Justice.
For the Defendant Sam Block: Raphael Dechter,
Esq., and B. L. Hoyt, Esq., 633 Subway Terminal
Building, Los Angeles, 13, California. [1*]

The Court: Mr. Clifton, you may call the roll
of the jury. It will not be necessary to have the

* Page numbering appearing at top of page of original Reporter's
Transcript.

jury here today, but the roll of the jury should be called.

(The jury roll was called by the Clerk.)

The Court: All the members of this panel are ordered to report to the court room of Judge O'Connor. That is court room No. 7, as you know, down at the end of the hall. You are now excused to go to court room No. 7.

The witnesses may be excused until tomorrow, also, is that right?

Mr. Dechter: That is correct.

The Court: All the witnesses in this case are now excused. They will return tomorrow morning at 10:00 o'clock.

You gentlemen may now proceed. Mr. Weymann and Mr. Dechter, I don't care which one of you proceeds to argue upon this question.

Mr. Dechter: I really feel, your Honor, that on this point the burden is on the government to show their authorization or right to take this property, and as of what date that right was secured.

Mr. Weymann: The property to be valued by the jury here consists of an oil and gas sublease owned by the defendant Block with one operating well on it. The position of the [2] government is this, that when the authorization to take this land was made by a resolution of the Reconstruction Finance Corporation pursuant to which this action was instituted, that authorization included all of the trade fixtures which constituted the operating equipment of the oil well on that lease.

The Court: Mr. Weymann, do you have that resolution, a copy of it, with you?

Mr. Weymann: I have the original resolution of September 18, 1942, and I have the resolution of the 19th of October, 1942 authorizing the filing of the declaration of taking, and I have a copy of the declaration of taking. Would the court wish these to be introduced in evidence?

The Court: I think it would probably be inadvisable to do it now. At least, it is unnecessary to do so. This is just a question of law, and if you submit them to the court or read the parts that are material, I think that will be sufficient.

Mr. Dechter: May I be heard on that?

The Court: Yes.

Mr. Dechter: With all due deference to the court's statement, I feel that in view of the fact that this is a point of law which your Honor has to decide that is based somewhat on the factual points, and those factual points are contained in those resolutions, I think it would be proper to have [3] them received as an exhibit. In other words, as I understand it——

The Court: I have no objection one way or the other, as long as that is the desire of the parties. They may either be marked for identification or be received in evidence.

Mr. Dechter: The reason I say that is I presume the court will make findings of fact as to these points of law. In other words, there will be findings of facts and conclusions, part of which will involve the jury.

The Court: This is only a matter of argument upon the question of law. All of the proceedings, of course, must take place after the trial has begun, and whatever determination the court makes must be made in the course of the trial. Now, is it your desire that it be considered that the trial has begun in the absence of the jury and these be marked for evidence? They can't be received in evidence unless the proceedings have actually begun.

Mr. Dechter: I am willing to stipulate the proceedings have begun and your Honor is trying that part of the case which is the court's province to decide. In other words, this is a point that the jury has no concern with.

The Court: My thought was the argument would simply be made and the court would announce its decision at the proper time after these may have been received in evidence. But either way is satisfactory to the court, whatever the parties agree upon. [4]

Mr. Dechter: I would prefer it that way.

Mr. Weymann: May I suggest then that we offer these for identification?

The Court: Well, it may be either way.

Mr. Weymann: I offer as Plaintiff's Exhibit 1, Resolution of the Reconstruction Finance Corporation adopted September 18, 1942.

The Court: Will you read that offer, please?

(The offer was read.)

The Court: Let it be marked as Plaintiff's Exhibit 1 for identification.

(Whereupon, the document referred to was

marked Plaintiff's Exhibit No. 1, for identification.)

The Court: Your offer for identification assumes that the trial has begun in the absence of the jury?

Mr. Weymann: That is correct, your Honor.

The Court: And that is your understanding as well?

Mr. Dechter: So stipulated, and I have no objection to its being received in evidence.

The Court: Well, it has been offered for identification and ordered marked for identification.

Mr. Weymann: I now offer as Plaintiff's Exhibit 2, Resolution of the Board of Directors of the Reconstruction Finance Corporation, adopted the 19th of October, 1942.

The Court: You are offering that it be received and the offer was offered for identification?

(Whereupon, the document referred to was marked as Plaintiff's Exhibit 2 and received in evidence.) [5]

PLAINTIFF'S EXHIBIT No. 2

AMENDATORY RESOLUTION

Whereas, this Corporation at the request of Defense Plant Corporation has caused condemnation proceedings to be instituted in the name of the United States pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public law 507, 77th Congress) and Executive Order 9217, for the purpose of obtaining possession of the lands described in the attached Exhibit "A",

for use as a storage reservoir for natural gas (Playa del Rey Natural Gas Storage Project, Plancor 1406); and

Whereas, Defense Plant Corporation has requested this Corporation to arrange for the filing of a Declaration of Taking in the Condemnation proceedings in order that title to said lands may vest in the United States at the earliest possible time;

Resolved, that the Resolution adopted by the Board of Directors of this Corporation on September 18, 1942 be amended by adding thereto the following Resolved Fourth, Resolved Fifth and Resolved Sixth:

“Resolved Fourth: It is necessary and advantageous in carrying out the authority vested in Defense Plant Corporation to acquire by condemnation the land described in Exhibit ‘A’.

“Resolved Fifth: The Treasurer or Assistant Treasurer and the Secretary or Assistant Secretary of this Corporation be, and hereby are, authorized and directed to execute under the seal of this Corporation a Declaration of Taking covering the land described in Exhibit ‘A’ in form and substance satisfactory to General Counsel or an Assistant General Counsel of this Corporation and to arrange for the delivery of such Declaration of Taking to the Attorney General of the United States for appropriate action.

“Resolved Sixth: Just Compensation for the

land described in Exhibit 'A' is estimated to be Seven Hundred Forty Thousand Four Hundred Sixty-nine Dollars (\$740,469)."

* * * *

The foregoing Resolution was duly adopted by the Board of Directors of Reconstruction Finance Corporation on the 19th day of October, 1942.

[Seal] LEO NIELSON

Assistant Secretary Reconstruction Finance Corporation

Mr. Weymann: The Plaintiff's Declaration of Taking No. 1 of course is on file with the court. I think it is in Volume 1 of these proceedings.

The Court: Well, I haven't read it, Mr. Weymann.

Mr. Weymann: Then, I will submit to the court for its convenience a copy of it.

The Court: I would like to have a copy.

Mr. Dechter: Will you have additional copies? I have a copy of the resolution, but not of the other.

Mr. Weymann: Yes.

The Court: You may proceed.

Mr. Weymann: I am just submitting to Mr. Dechter a document for his inspection. I offer as Plaintiff's exhibit next in order a telegram from Leo Nielson, Assistant Secretary of the Reconstruction Finance Corporation, to Eugene D. Williams, Special Assistant to the Attorney General, telegram being dated March 26, 1945.

Mr. Dechter: To which we will object, your

Honor, on the ground that it is incompetent, irrelevant, immaterial, being a self-serving declaration and attempting to usurp the province of the court in construing the legal steps theretofore taken by the plaintiff and trying to cast plaintiff's own construction on those legal steps which it is the duty of this court to determine in this matter.

The Court: May I see it? [6]

Mr. Weymann, the court is inclined to sustain that objection. It sounds as though it is properly based, but I would like to hear from you.

Mr. Weymann: The matter which the court is now called upon to pass upon is to determine what the Reconstruction Finance Corporation really did when it authorized the bringing of this action. That is not a self-serving declaration, but it is an explanation of what Reconstruction Finance Corporation meant by what it did. In other words, it is an interpretation, or rather a statement of what the Reconstruction Finance Corporation had in mind when it passed those resolutions.

The Court: I think the objection is good. It says here particularly that certain proceedings have been properly construed by justice as an adoption and ratification. It may be marked for identification.

Mr. Weymann: Thank you. May I have an exception?

The Court: Yes.

(Whereupon, the document referred to was marked as Plaintiff's Exhibit No. 3, for identification.)

PLAINTIFF'S EXHIBIT No. 3

(For Identification)

Received Mar. 26, 1945. Lands Division, Los Angeles, California.

GA

SN74 249 Govt

WUX Washington DC Mar 26 1250P 1945

Eugene D Williams

Special Asst to Attorney General

Re Playa Del Rey Gas Storage Project. Amendatory Resolution Adopted by Directors Reconstruction Finance Corporation October 4 1943 Authorizing Amendment to Petition in Condemnation Proceedings Number 2454-B Civil to Include Certain Items of Property Designated As Personal Property Located on Lands Covered in Declaration of Taking Filed in Said Proceedings Has Been Properly Construed by Justice As An Adoption and Ratification of Act of Defense Plant Corporation in Taking Possession on September 28, 1942 of Property Listed in Exhibit C of Amended Petition in Condemnation in Connection with Taking Possession of Land Covered by Such Declaration of Taking. At Time Declaration of Taking Was Filed Necessity for Taking Some of Items Described in Said Exhibit C Could Not Be Determined As Defense Plant Corporation Had No Way of Knowing What Items of Property Were Located on Site or Would Be Required in Connection with Operation of Project, and Some of Items Included

in Exhibit C, including Oil Drilling Equipment, Were Thought to Be Part of Realty So As to Have Been Acquired Upon Filing of Declaration of Taking. Reconstruction Finance Corporation Did Not Delete Any of Items in Inventory Furnished by Representatives of Defense Plant Corporation, Which Inventory Was a List of All Property Known to Be on Lands Taken Except Certain Items of Property Which Were Determined Prior to Adoption Amendatory Resolution of October 4, 1943 Not to Be Required in Connection with Project and with Respect to Which Arrangements Had Been Made for Release to Former Owners

LEO NIELSON

Asst Secretary

4 1943 2454-B 28 1942 C 4 1943

1023AM . .

RCD SN 74 TNX

Mr. Weymann: I offer in evidence as next in order a letter from the Attorney General to Mr. Irl D. Brett, dated September 22, 1942, enclosing a certified copy of a letter from the Assistant Secretary of the Reconstruction Finance Corporation dated September 19, 1942. [7]

The Court: It may be received in evidence.

Mr. Dechter: May I see it, your Honor? I have not seen it before.

The Court: Oh, yes. The court will withhold its ruling.

Mr. Dechter: All right. I have examined it.

The Court: It may be received and marked as Plaintiff's Exhibit 4.

(Whereupon, the document referred to was marked as Plaintiff's Exhibit No. 4, and received in evidence.)

PLAINTIFF'S EXHIBIT No. 4

Received Sept. 24, 1942. Lands Division, Los Angeles, California.

RJL-ICH 33-5-882

Department of Justice
Washington, D. C.

September 22, 1942

Air Mail

Mr. Irl D. Brett

Special Assistant to the Attorney General

Federal Building

Los Angeles, California

Dear Mr. Brett:

There are enclosed certified copy of a letter dated September 19, 1942, from Leo Neilson, Assistant Secretary, Reconstruction Finance Corporation, to the Attorney General, requesting that a proceeding be instituted to acquire by condemnation certain land in the City of Los Angeles, State of California, for use in connection with the establishment of a reservoir for the storing and conservation of natural gas, four copies of Exhibit A, and two plats.

Kindly prepare a petition and related papers and

institute a proceeding pursuant to the Second War Powers Act, Public Law 507, 77th Congress, approved March 27, 1942, and obtain from the court an order granting to the Government the right of immediate possession. Please forward to the Department certified and uncertified copies of the complaint and order and notify the Department by wire of the date when the Government has the right of possession.

Please notice that the estate being acquired is in fee simple, subject to existing easements for public utilities.

Arrangements have been made by the War Department for the procurement of title evidence and same will be made available to you.

Respectfully,

For the Attorney General

/s/ J. EDWARD WILLIAMS

Acting Head, Lands Division

Enclosure No. 602918

RECONSTRUCTION FINANCE
CORPORATION

Washington

September 19, 1942

The Honorable Francis Biddle
Attorney General of the United States
Washington, D. C.

Dear Sir:

In connection with the establishment of a reser-

voir for the storing and conservation of natural gas (Playa Del Rey Natural Gas Storage Project, Plancor 1406) by Defense Plant Corporation, a corporation created pursuant to Section 5(d) of the Reconstruction Finance Corporation Act, as amended, to relieve a shortage of gas which would impede the war effort, this Corporation has determined that it is necessary for war purposes to acquire certain lands situated in the City of Los Angeles, State of California.

Therefore, pursuant to the provisions contained in the Act of Congress approved January 22, 1932 (15 U. S. C. 601-617) as amended, and Public Law 507, 77th Congress approved March 27, 1942, and Executive Order 9217 issued by the President of the United States on August 7, 1942, by virtue of and pursuant to authority vested in him by Title II of the Second War Powers Act 1942, approved March 27, 1942 (Public Law 507, 77th Congress) authorizing Reconstruction Finance Corporation to acquire and dispose of property deemed necessary for military, naval or other war purposes, it is requested that you cause the necessary proceedings to be instituted for the acquisition of the lands described in the enclosed Exhibit "A." The estate to be acquired is the full fee simple title subject to existing easements for public utilities.

You are advised that it is vital to the successful prosecution of the war that the United States be granted the immediate right to occupy, use and improve the lands described in Exhibit "A". It

is, therefore, requested that you cause the necessary action to be taken to procure an order from the court granting the United States the immediate right to occupy, use and improve said lands pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress) and Executive Order 9217.

Arrangements have been made for the procurement of title evidence covering the lands to be condemned. Such title evidence will be made available to the United States Attorney.

There are enclosed three copies of a description of the lands to be condemned entitled Exhibit "A" and three copies of a plat showing the location of said lands to be condemned.

Very truly yours,

.....

Assistant Secretary

Enclosures

WJR:ebs

Pursuant to T. 28 U. S. Code, Sec. 661, I certify this to be a true copy of the original record in this Department.

[Seal]

J. EDWARD WILLIAMS

Acting Head, Lands Division
Department of Justice

Mr. Weymann: I offer as Plaintiff's exhibit next in order letter from the Attorney General to

Mr. Irl D. Brett, dated October 24, 1942, to which is attached a certified copy of a letter dated October 22, 1942, to the Attorney General from M. C. Mulligan, Assistant Secretary of the Reconstruction Finance Corporation. [8]

The Court: It may be received and marked as Plaintiff's Exhibit 5.

(Whereupon, the document referred to was marked as Plaintiff's Exhibit No. 5, and was received in evidence.)

PLAINTIFF'S EXHIBIT No. 5

Address Reply to "The Attorney General" and Refer to Initials and Number

RJL-ICH 33-5-882

Department of Justice
Washington, D. C.

October 24, 1942

Received Oct. 26, 1942 Lands Division Los Angeles, California

Air Mail

Mr. Irl D. Brett

Special Assistant to the Attorney General

Federal Building

Los Angeles, California

Dear Mr. Brett:

There are enclosed copy of letter dated October 22, 1942, from M. C. Mulligan, Assistant Secretary of Reconstruction Finance Corporation, to the

Attorney General, requesting that declaration of taking No. 1 be filed in the condemnation proceeding entitled United States of America for use of Reconstruction Finance Corporation, et al., vs. Certain Parcels of Land in the City and County of Los Angeles, State of California, and County of Los Angeles, et al., and four copies of declaration of taking No. 1. A check in the sum of \$740,469.00, payable to the Clerk of the District Court of the United States in and for the Southern District of California, will be made available by Defense Plant Corporation at Los Angeles, California, as estimated compensation for the land.

Kindly file the declaration of taking in the above proceeding, enter an order thereon, and deposit the check into the registry of the court. Then forward to the Department certified and uncertified copies of the pleadings and advise the Department by wire the date when the above papers are filed and the date when possession is available to the Government.

Arrangements have been made by the Reconstruction Finance Corporation for the procurement of title evidence.

Respectfully,

For the Attorney General

/s/ NORMAN M. LITTELL

Assistant Attorney General

Enclosure No. 602407

October 22, 1942

Honorable Francis J. Biddle
Attorney General of the United States
Department of Justice
Washington, D. C.

Re: Playa Del Rey Natural
Gas Storage
Plancor 1406

Dear Sir:

In connection with the establishment of a storage reservoir for natural gas by Defense Plant Corporation, a corporation created pursuant to Section 5d of the Reconstruction Finance Corporation Act as amended, this Corporation has determined that it is necessary and in the interest of the United States to acquire by judicial proceedings certain lands situated in Los Angeles County, State of California. The lands and estate to be taken are more particularly described in the Declaration of Taking, the original and four copies of which are enclosed.

There is urgent need for the acquisition of title to this land and it is desired that the enclosed Declaration of Taking be filed with the least possible delay.

A check in the amount of \$740,469.00, payable to the Clerk of the District Court of the United States in and for the Southern District of California, Central Division, representing the sum of money estimated to be just compensation for the land to be taken, will be made available by Defense

Plant Corporation acting through its agent, the Manager of the Loan Agency of Reconstruction Finance Corporation at Los Angeles, California. Arrangements have been made for the procurement of title evidence covering the lands to be taken.

Very truly yours,

[Seal] /s/ M. C. MULLIGAN

Assistant Secretary

Pursuant to T. 28 U. S. Code, Sec. 661, I certify this to be a true copy of the original record in this Department.

NORMAN M. LITTELL

Assistant Attorney General Lands Division, Department of Justice

Enclosures.

Mr. Weymann: If the court please, may we proceed?

The Court: Yes.

Mr. Weymann: The position of the government is this, that under the original authorization, resolution of September 18, 1942, authorizing the bringing of this proceeding for the condemnation of certain property, all of the trade fixtures, all of the improvements thereon, were included in that authorization and were attached to the land at that time. In support of that contention I wish to cite to your Honor the following cases: *City of Los Angeles v. Klinker*, 219 Cal., page 199.

The Court: 199?

Mr. Weymann: 219 Cal., page 199. United States v. Seagren, 50 Fed. (2d) 333. That was a District of Columbia case.

Bell v. Bank of Perris, a California case, 125 Pac. (2d) 829.

The Court: Don't you have the California citation?

Mr. Weymann: I will get the California citation.

Mr. Dechter: May I have that citation, please?

Mr. Weymann: 125 Pac. (2d) 829. I will get the California [9] citation.

San Diego Trust & Savings Bank v. San Diego, 16 Cal. (2d) 145. In re: Allen Street, 256 New York, 236.

The facts in the Seagren case, which is a case arising in the District of Columbia, which was a condemnation proceedings, Seagren was a lessee of certain property described as a vacant lot. The lease gave the tenant authority to erect buildings and implant tanks and other structures and to take away and remove the said buildings and structures at the termination of the lease. In other words, it was a filling station. The question arose as to whether the private stipulations for removal between the land owner and the tenant inured to the benefit of the government when condemning the estate of both.

We are condemning the estate of both the landlord and the tenant here, but the valuation of the tenant's property is only under consideration.

The court there said this. It is a short opinion if I may read that:

“We find the controlling rule well stated in Nichols on Eminent Domain: ‘It frequently happens that, in the case of a lease for a long term of years, the tenant erects buildings upon the leased lands or puts fixtures into the building for his own use. It is well settled that, even if the [10] buildings or fixtures are attached to the real estate and would pass with a conveyance of the land, as between landlord and tenant they may remain personal property, and, in the absence of special agreement to the contrary, may be removed by the tenant at any time during the continuation of the lease provided such removal may be made without injury to the freehold. This rule is however entirely for the protection of the tenant and cannot be invoked by the condemning party. If the buildings or fixtures are attached to the real estate, they must be treated as real estate in determining the total award, but in apportioning the award they are treated as personal property and credited to the tenant.’ ”

The Court: I didn’t hear the very last.

Mr. Weymann: “* * * but in apportioning the award they are treated as personal property and credited to the tenant.’ ”

“And the New York courts have frequently considered the question, and stated the rule very precisely: As the property now exists, it is real property, and so remains until the structure is severed from the soil. This act the tenant is not

bound to perform at the time the property is taken. As it [11] then is, so it may always remain; and, when the city makes the compensation for the property, it steps into all the rights possessed by both parties. * * *''

Now, the contention is made here that as between the lessor and lessee the lessee may remove such of the operating equipment as he may salvage. That is true upon the abandonment of the well. When he removes his operating equipment he abandons the well, consequently there can be no value or valuation of that property as a producing oil well. The valuation to be determined in this proceeding is the valuation of a producing property. That carries with it all of the incidentals, everything necessary to make it a producing property.

If the improvements which go with it are to be valued separately, then all the value that remains is that of a potential oil land, not as a producing property. But what the government took was a producing property.

The court in the case of *City of Los Angeles v. Klinker* cited a case——

The Court: Did you give that citation? Is that K-l-i-n-k-e-r?

Mr. Weymann: K-l-i-n-k-e-r. That pertained to the condemnation of the building and printing machinery of the Times Mirror Company, and the court there cited an Indiana Appeals case, *White v. Cincinnati, etc. Railroad*, 34 Ind. App. [12] 287 (71 N. E. 276), in which the machinery of a paper

mill was held to be part of the realty. The court there said:

“It is clear from the record that the improvement upon the real estate consists not simply of certain buildings containing various pieces of machinery, but of a paper mill—a thing complete within itself.”

In this case it consists not merely of a derrick, tanks and so forth, but a complete operating unit.

“One machine essential in the manufacture of paper might be so annexed to or constitute such part of a building that it could not be removed, and another machine equally essential might be easily removed, and yet, when the two machines are separated, each is without value for the uses intended.”

In this instance we have a well and we have the leased ground which is oil-bearing. The ground is useless without the well to produce it, and the producing equipment is useless without oil-bearing sands.

“As the machinery is permanent in its character,—” as in this case it is permanent so far and lasts as long as the property interests which this defendant has.

“—and, being essential to the purpose for which the buildings are used, is a fixture, it must be [13] regarded as realty, and goes with the buildings. The land, waterpower, buildings, and machinery constitute a paper mill plant—a unit. It has or has not a value as such, just as a building is valued,

not by fixing a value on the different materials composing it, but as a building."

That seemed such a clear-cut case. And then the Bank of Perris, which I have cited to your Honor and which I will get the California citation.

The Court: The Bank of Perris, is it?

Mr. Weymann: P-e-r-r-i-s.

The Court: Bank of Perris v. whom?

Mr. Weymann: Bell v. Bank of Perris. There the California court held that a pumping plant for a water well was part of the realty.

The San Diego Trust & Savings Bank case was one of the bank vault door cases. It was there contended that as the vault doors were removable they remained personal property. The court held that the doors were part of the realty even though they could be removed without material damage, saying:

"It is sufficient if the article shall appear to be intended to remain when fastened until worn out, until the purpose to which the realty is devoted has been accomplished or until the article is superseded by another article more suitable for [14] the purpose."

That is precisely the situation we have here: The operating equipment is intended to be used in connection with land.

The Court: When you speak of operating equipment, that might include many items. Now, here in this San Diego case, the door was actually a part of a vault, and there it was held to be properly condemned when the realty was condemned.

I would like a little more clarification as to what type of property we are likely to have here, Mr. Weymann.

Mr. Weymann: We have the casing, tubing——

The Court: Well, the casing, that is attached in the well?

Mr. Weymann: Yes, it is attached in the well. The tubing——

The Court: The tubing, likewise?

Mr. Weymann: Sucker rods, pump, derrick, tanks, and fittings.

The Court: Well, fittings were part of the machinery that was attached to the well?

Mr. Weymann: That is correct.

The Court: No loose personal property?

Mr. Weymann: Nothing on the rack or nothing in the warehouse. Is that correct?

Mr. Dechter: I don't agree with you on that.

Mr. Weymann: That, of course, is subject to correction. Our information is that all of this material is used in connection with the operating well.

The Court: When you say "used in connection with" there might be some wrenches or something of that kind that were used in connection with the operation of the well, but they can be used in connection with the operation of any well and would not be attached in any way to any of the fixtures. You don't mean anything of that kind?

Mr. Weymann: No, I don't mean anything of that kind. And if there are any such items that are not part of the operating unit, we are perfectly

willing to stipulate they may be considered outside of this acquisition.

So, it is our position, then, that under the original authorization the operating unit was condemned, taken into possession by the government on September 28, 1942.

Now, there is just one further point— [16]

The Court: Before you leave that, Mr. Weymann, I want to ask you this question. You said if there are other items which are not included in those that you have mentioned, they may be considered as outside of the case.

Mr. Weymann: Outside of the taking as of September 28, 1942.

The Court: Yes. Well, now, suppose they were taken. Suppose there were some and that they were taken. There seems to be some disagreement on that point, but they would be unlawfully taken?

Mr. Weymann: That brings me to my second point.

The Court: Then, I am sorry I interrupted you. Go ahead.

Mr. Weymann: My second point is this. That which the Reconstruction Finance Corporation could originally authorize, it could subsequently ratify, and that if the taking on September 28, 1942, was and had its inception unlawfully, it was ratified by the subsequent action of the Reconstruction Finance Corporation, and the filing of the amended complaint pursuant to that subsequent ratification relates back to the date of the original taking as of that time.

The Court: Well, what did Judge McCormick hold in that respect?

Mr. Weymann: I may explain this, your Honor. The situation with the Treasure Company is not the same as the situation here because there, drilling equipment which was on [17] the ground and which was not used in relation to any well whatever, was taken into possession.

The Treasure Company sued the Union Oil Company, alleging that the taking was invalid and unlawful. The Government asked for an order enjoining the prosecution of the State Court action and Judge McCormick denied that petition.

The Court: Well, he held, did he not, and I am not so sure, but I am just asking for information—perhaps I should put it this way. Did he hold that there was no relation there?

Mr. Weymann: I don't so construe it, but in any event the equipment which was there under consideration was not pumping equipment, but it was drilling equipment.

The Court: Well, now, just right there I believe we get back to the question the court asked. If there is any personal property which was unattached in any way, but which was lying there on the ground or in the sheds, then that would come within the scope of Judge McCormick's ruling?

Mr. Weymann: I think so.

The Court: That is, it would be similar to the Treasure Company?

Mr. Weymann: That is right.

The Court: Of course, then, there is a question

of fact whether or not there was any such. Your position is that there was not, and Mr. Dechter's is that apparently there [18] was some.

Mr. Weymann: I am not prepared to say that there may not have been a few wrenches or odd miscellaneous items lying around, because it is difficult in inventorying a huge mass of material.

The Court: Then, suppose that they were taken? Then the taking would not have been under the authorization?

Mr. Weymann: That is correct. It would be tortious taking.

The Court: And what about the determination of their value?

Mr. Weymann: Well, if it was a taking without any authorization whatever, then I don't believe it would be triable in this proceeding, this being a condemnation proceeding and the value would have to be determined by claim filed under the Tucker Act if there was no authorization for the taking.

The Court: You have finished your presentation, Mr. Weymann?

Mr. Weymann: Yes, sir.

The Court: Mr. Dechter?

Mr. Dechter: Before I proceed to reply to Mr. Weymann, I would like to ask for a stipulation that under the sub-lease dated February 26, 1935, from Mr. Spangler, the original lessee, to the Colly Oil Company, sub-lessee, which is recorded in Book No. 13329, page 93, of the official records [19] of the County Recorder of Los Angeles County, that

there is a provision in Paragraph 9 giving the sub-lessee the right to remove personal property and equipment placed on the premises described in said lease at any time during the term of said lease and within 30 days after termination of said lease.

Mr. Weymann: I don't know if I can stipulate as to those terms, Mr. Dechter. My abstract reads, "Upon the termination of the lease."

Mr. Dechter: Paragraph 9 says, "up to within 30 days of termination, at the termination, or within 30 days."

Mr. Weymann: Up to any time within 30 days after termination of the lease. But not any time during the term of the lease.

Mr. Dechter: That is right.

Mr. Weymann: I will so stipulate that the equipment as between lessor and lessee and the sub-lessor and the sub-lessee, the equipment placed upon the lease may be removed at the termination of the lease or any time within 30 days thereafter.

Mr. Dechter: Well, I will ask permission for the purpose of this argument, your Honor, to offer a certified copy of that sub-lease. I called Mr. Weymann and asked him if it would be necessary.

The Court: Well, you seem to be in some disagreement on that, and perhaps you had better have it. [20]

Mr. Dechter: Now, I will ask Mr. Weymann if he will stipulate to the base lease as to the form, Mr. Comstock as receiver, that the U. S. Building & Loan Association to Mr. Spangler, which is reported in Book 13157, Page 165, that that base leaf

reflects almost at the very beginning of the lease where it grants the right to explore and develop for oil, and it has this language:

“With the right to remove during or after the term any and all improvements placed or erected on the premises by lessee, including the right to pull all casings.” That is on the first page of the lease.

Mr. Weymann: So stipulated that that is included in the original lease.

Mr. Dechter: And it is my contention that the certified copy of the sub-lease, your Honor, will show that the sub-lessee had the right to remove at any time during the term and up to within 30 days after termination.

The Court: Very well. You will have that here this afternoon?

Mr. Dechter: Yes. Well, I will order it. I might not have it until tomorrow morning.

The Court: Then, I think it would be well to have someone from your office go over and copy off that portion and just bring it here so that the court may have it. That may be important. [21]

Mr. Dechter: I am willing to go with Mr. Weymann right to the Recorder's office. It will only take about ten minutes. We can agree on it.

Mr. Weymann: If that is what it is, we will so stipulate, but my abstract——

The Court: There is no criticism of your not stipulating.

Mr. Weymann: I understand.

The Court: But what I want to do is have it before tomorrow morning.

Mr. Dechter: In other words, your Honor, we will leave from here this noon, Mr. Weymann and I, and go right to the Recorder's office.

The Court: Very well. I didn't even intend that you should have Mr. Weymann go with you. Just have some one from your office copy that particular phrase, but if the two of you go, it will be that much better.

Mr. Dechter: If your Honor will examine the resolution which is Plaintiff's Exhibit 1 and which is a pre-requisite for this proceeding; that is, the resolution of the Reconstruction Finance Corporation authorizing the Defense Plant Corporation to acquire certain lands for gas storage project, the first recital is:

"Whereas Defense Plant Corporation has been unable to acquire title to the lands required for said storage [22] reservoir," which lands are described in Exhibit A, and the resolution resolved first, in the next to the last paragraph on page 1:

"It is necessary for war purposes that the lands described in Exhibit A be acquired by condemnation proceedings, and in connection therewith that the immediate right to occupy, use and improve such lands be granted."

Now, the same issue, your Honor, was involved before Judge McCormick, and it is my understanding that the personal property involved in the Treasure Oil Company included property exactly the same as that here, but the point is, as your Honor asked Mr. Weymann, did the resolution of October of 1943, Plaintiff's Exhibit 2, have the ef-

fect of ratifying or having a retroactive effect so that it would date from September 18, 1942, the date of the first resolution, to include personal property or include anything else except lands?

Judge McCormick wrote a 12-page opinion on the matter, and taking the highlights of that opinion—I have an extra copy if your Honor would like to have it.

The Court: Yes, I would like to have it. I have it in my chambers, but if you have one here, I will look at it.

Mr. Dechter: On page 2, line 11, Judge McCormick says:

“Neither the letter of authority authorizing the institution of the action, the complaint in condemnation, nor the order for possession provided for the condemnation [23] or acquisition of personal property. These instruments all specifically called for the condemnation of land only.

“Notwithstanding the limitations of the order for possession, the seizure made by the Government on September 28, 1942, included personal property, as well as real property.”

On page 3 it states further:

“On November 24, 1943, an admittedly ineffectual amendment to the complaint in condemnation was filed in this court. Later, on January 12, 1944, an authorized amendment to the complaint in condemnation was filed herein. This pleading specified as within the scope of the condemnation proceeding the personal property which is the bone of contention in the proceedings before the court.”

Then, on page 9, line 28:

“While it is probably true under the broad powers reposed by Congress in the Executive by Title II of the Second War Powers Act that the personal property involved in this controversy might have been acquisitioned with the land or acquired as incidental thereto, the record evidence before us clearly proves that no such situation existed. As previously adverted to, all of the memorials, instruments of authority and pleadings leading up to and [24] accompanying the acquisition by the plaintiff pertain to land, and only to land. Nor is there any indication in the resolutions of the acquiring agency of September 19, 1942, and October 19, 1942, that evince any intention to acquire the personal property in dispute as part of the natural gas storage facility sought through the condemnation proceedings instituted in this court.

“The fair preponderance of the evidence before us establishes, we think, that the present claim that it was the intention from the inception of the project to acquire the personalty is an afterthought conceived to avoid possible consequence of the seizure of September 28, 1942.

“There can be no serious claim of ratification by plaintiff of the seizure of the personalty because before any adequate manifestation by plaintiff of an intention to acquire such property was evident, the State Court had already acquired jurisdiction of the res.”

On the same page 10, line 31:

“One of the jurisdictional essentials of a pro-

ceeding in condemnation of the judicial type is that the property sought to be taken shall be described in the petition (complaint).

“It is clearly established by the record before us that no specification whatever of any personalty was [25] made in any of the proceedings until the month of October, 1943, when for the first time an authorization to amend the pleadings so as to include personal property was given, and it was not until the following January that the amended complaint directed to the acquisition of the personal property in issue was filed.

“Thus we find that the earliest effectual and authorized acquiring of the personal property by the Government was subsequent to the acquiring of jurisdiction over the same res by the State Court in the recovery actions pending therein.”

Now, if we look at the first time any personal property involved was particularly described, your Honor, it was when the last amended complaint was filed, and accompanying that complaint as an exhibit was this inventory of the property and equipment, and it completes the personal property of my client on which we are claiming separate valuations.

Now, under Mr. Weymann's theory that this would pass with the land, it would mean that if a purchaser of the land was buying this land from the owner of the land, that he would acquire this particular personal property. Now, it is my contention that this particular property described in the inventory as an exhibit to the complaint would

not have passed in an ordinary sale between vendor and vendee, and your Honor knows that in these condemnation cases the courts have held [26] including the United States Supreme Court, that the Government is in the position of the buyer and the owner of the property condemned in the position of an involuntary seller, but the rights and position of vendor and vendee are also to govern as to the particular interest sought to be acquired.

Now, it is my contention that even without the provision in the lease giving the right of removal, that under the law of trade fixtures, that this would be considered personal property. As your Honor knows, trade fixtures are an exception to the rule, that anything affixed to the realty becomes a party of the realty, and where something is affixed to the realty for the purpose of carrying on a trade or business, and the operation of an oil well has been considered and held to be that of conducting a business, that you have a right to remove those trade fixtures as long as you do no permanent or serious damage to the freehold or land itself, or, if the tenant occupies a building, permanent damage to the building to which he attaches the fixtures.

On that point I would like to refer the court to Summers on Oil and Gas at page 276 where the author says:

“The lease usually contains a clause permitting the lessee to remove all machinery and equipment from the land.”

The Court: What page number?

Mr. Dechter: Page 276. If your Honor does not have that [27] work handy, I have it at the office and I can bring it over.

The Court: I don't have it.

Mr. Dechter: I can bring it here for you.

The Court: Could you send it to me this afternoon?

Mr. Dechter: Yes, your Honor. It states:

"The lease usually contains a clause permitting the lessee to remove all machinery and equipment from the land. The courts hold that all machinery, as well as casing in the well were trade fixtures and removable by the lessee within the term" citing numerous cases. Then, on page 644 of the same work:

"It is a well-settled rule that casing in wells, derricks, engines and other machinery and appliances placed on the land by the lessee for testing, developing and operating the land for oil and gas purposes are trade fixtures" citing, in addition to the other cases which he cited, additional cases.

Then, in Thornton on Oil and Gas, Volume 1, Fourth Edition, Section 652, it is said:

"There is no difference taking into consideration the character of the fixtures in this lease between a lease to bore for oil and gas and one to dig for coal or other minerals * * * thus a steam engine, boiler and pump sunk into a ledge of a rock in order to get a level and covered by a shed or shelter used in working a mine is trade fixtures and may be [28] removed by the tenant."

I refer to the case of *Merritt v. Judd*, 14 Cal., page 60:

“Where A agreed with B to put in machinery to bore a salt well on B’s land and B sold the land to C. Held: The machinery did not pass by the conveyance. It was put on the premises for a temporary purpose to sink a well and could be removed without injury to the freehold.”

In the case of *Perry v. Acme*, 44 Ind. App. 207, being one of the cases cited by Summers, it holds oil machinery to be trade fixtures and holds that they were not lost to the trustee in bankruptcy of the lessee’s transferee by reason of a judgment of a state court declaring a forfeiture of the lease.

In the case of *Churchill v. Moore*, 4 Cal. App., page 219, it was held that where the oil lease provides that the lessee could remove fixtures, machinery, etc., at any time, lessee was given the right as against a subsequent purchaser.

The Court: Do you have any case where this question arose in a condemnation proceeding?

Mr. Dechter: No, your Honor. I think I can reconcile the cases.

The Court: I just asked the question. You may proceed.

Mr. Dechter: In the case of *Midland v. Rudneck*, 188 Cal. 265, which also involved an oil well, and incidentally, [29] that *Churchill v. Moore* case was an oil lease case too.

In *Midland v. Rudneck*, 188 Cal. 265, it was held that boilers and other equipment and a derrick

placed on a mining claim for the purpose of boring for oil * * *”

Incidentally, your Honor, in those days when that case was decided oil wells on Government lands were treated the same as mining claims and came under the mining claim lease Act. In other words, people located oil wells in the same manner they located mining claims, and the court said this:

“Where boilers and other equipment and a derrick placed on a mining claim for the purpose of boring for oil and under a contract with the owner that the same might be removed, and the evidence shows that the boilers and derrick were not affixed permanently to the ground but rested of their own weight thereon, such property was personalty insofar as the contractor and the owner and the owner’s successor in interest is concerned.”

The court saying that it is common knowledge that rigs of this character are moved from place to place by the owner and that the derrick was personal property.

Other illustrative cases of trade fixtures under Civil Code, Section 1014, which declares them to be trade fixtures and the right to remove them, are the cases of *McGary v. Osborn*, 9 Cal. 119. Also 118 Cal. 635, and 21 Cal. App. 480.

The case of *Murr v. Cohn*, 87 Cal. App. 478, involved a [30] gas station where pumps and gas tanks were put in concrete in the ground, and the court held they were trade fixtures and removable.

The Court: What case is that?

Mr. Dechter: *Murr v. Cohn*, 87 Cal. App. 478.

In 26 Corpus Juris at page 684 it is said: "An agreement that an article or structure"—

The Court: 684?

Mr. Dechter: Yes, your Honor.

"An agreement that an article or structure attached to the real estate shall be removable or shall remain personalty, whether expressed, or merely implied from the making of a chattel mortgage thereon, the conditional character of a sale thereof, or its annexation under license, is ordinarily given full effect as against a mortgage of the realty made previous to annexation, * * *"

In a decision by the Appellate Department of the Superior Court, decided June 15, 1937, being the case of *Huntington v. Novotney*, and published in the *L. A. Daily Journal*, there was a case where a holder of a street bond foreclosed on a piece of real estate on which there was a service station and acquired a deed to the property, and there was a question whether the service station equipment which is affixed to the real estate, as your Honor is familiar with, passed with the sale of the real estate under this foreclosure of the street bond, and the Appellate Department said:

"Lessee's right of removal of service station equipment from the realty is superior to that of the purchaser of the realty only, at a sale for non-payment [32] of a street improvement bond."

The Court: Was that published in any of the reports?

Mr. Dechter: I don't know. All I have, your Honor, is a clipping, unreported decisions. I can

check and see. They usually are published in the California Appellate Reports in the appendix. I will check it and give your Honor the citation. Apparently it was put in my file at or about the time it came out.

The Court: What was the date of it?

Mr. Dechter: June 15, 1937. That was an appeal from the Municipal Court to the Appellate Department of the Superior Court.

Therefore, your Honor, on my first point it is that a condemnation of the lands only, being in the same category as a sale of the land by the owner of the land to a buyer, would not have passed or conveyed title to this particular personal property because it was personal property, and also under the usage in the oil industry anybody buying real estate would be chargeable with knowledge that personal property used in connection with an oil well is removable by the lessee of the oil well in question.

On the second point, from a practical standpoint I can't see how it makes any difference, because Mr. Weymann has to admit that if the land was condemned as a unit it would be necessary to determine the value of the [33] component parts of the unit where the unit was not all owned by one person.

For example, we have condemnation cases in this state where business buildings have been condemned. It is true that the value is brought in as of the property as a unit, but then it is necessary to determine how much is the value of the lessee's interest. In some of those cases the lessee's interest

has been even greater than the owner of the land itself.

So, from a practical standpoint I can't see how it would make any difference. And in this case we have the anomalous situation that the government has already settled with the landowner and the landowner's rights are not involved, the lands aren't involved at all, all that is involved is this leasehold and this personal property.

All of the cases that counsel has cited, as I gather from his argument—I am personally familiar with the first case that he cited, *City of Los Angeles v. Klinker*, which involved a condemnation of the Klinker Building on First and Broadway. That was a case where the building was owned by the person who owned the printing presses, and what the owner was attempting to do was to segregate the valuations of a portion of the building so as to get a valuation as personal property and a valuation as to real estate as to the balance. In other words, there was no lessee involved, there was no apportionment [34] involved, and the court held, therefore, it was the value of the property as a unit.

The Court: Here we have the ownership of the leasehold and of the so-called personal property in one person.

Mr. Dechter: That is correct, but the owner of the land is a different person.

The Court: I know, but we are not considering the owner of the land here. Mr. Weymann, as I take it, argues that the rule would be just the same

whether it was the owner on both the land and the personal property, or whether the leasehold owner owned the lease and the personal property, the ownership resides in one person.

Mr. Dechter: My argument is that the analogy is not the same. For example, supposing we had a leasehold on a store on Broadway, your Honor, and in connection with that store there were counters, fixtures, and other items necessary to carry on the business, besides stock in trade. In that particular case the value of a leasehold interest would have no relationship whatever to the fixtures or equipment used to carry on that business that is carried on in the leasehold. The value of that leasehold would be determined by what the income or value was that the lessee would make over the period of the lease. In other words, supposing he was paid a rent of so much a month, say \$200.00 a month, and he could show that the leasehold by reason of the amount of business he was [35] doing had a value to him of, say, \$300.00 a month, he would be entitled as the valuation of the leasehold to \$100.00 a month multiplied by the term of the lease. Or, for example, take the same illustration and using a different line of reasoning, supposing he was paying \$200.00 a month for this leasehold, and supposing real estate conditions had changed so that if he wanted to move his fixtures out and move his business out he could turn around and sublease it to somebody else for \$300.00 a month, he would be able to show that as the value of the leasehold.

Now, here we have a leasehold involving oil in the ground; the government isn't condemning this property for the use of an oil well, the government is condemning this property for the use of a reservoir, and under the law it has to pay what a purchaser would pay considering all the uses to which it would be put. Now, one of the uses to which it might be put is the recovery of so much oil in the ground, and therefore that oil in the ground has a separate potential value.

Now, they have a right to show in reducing the valuation that we put on a leasehold that in order to get that much oil that is in the ground out it will cost so much to get it out, and therefore that will be deducted, I presume, by their experts, from the total amount of oil which they consider would be extracted from the premises. In other words, the cost of extracting it. But the equipment has a value all by itself, [36] just like the fixtures in a department store.

Supposing they came along, and supposing this field had all been condemned and there were only two or three wells on it, and it was still suitable as a gas reservoir and would save the government a lot of money because it wouldn't have to put storage on the surface taking up maybe twice or three times the area, and building steel tanks, in order to utilize it properly it would have to drill additional wells to be able to force more gas in it than it could by one well or two wells, it would have to pay for the equipment necessary to drill those additional wells. Now, that equipment is there, it is

available for use. Are they to get that equipment for nothing and just pay for the value of the oil in the ground alone? That is what Mr. Weymann's argument is.

In other words, my contention is that the fair market value, what a purchaser willing to buy and having a reasonable time to look around would pay, and what a seller who is willing to sell and having a reasonable time in which to find a buyer would sell, both of them will take into consideration, first, how much oil——

The Court: I think you have already argued that, Mr. Dechter. Let me ask you this question: How do you distinguish these cases that Mr. Weymann has referred to?

Mr. Dechter: I distinguish them in this way, that in the case of the Times—— [37]

The Court: Or reconcile them?

Mr. Dechter: In the case of the Times there was no separation of ownership, and what the property owner was trying to do was to treat fixtures like plumbing separate from being a part of the building. In other words, like the paper mill that he referred to, if that paper mill was sold it would be sold as a unit, and it is the market as a whole.

It is my contention the market of my leasehold is made up by the oil in the ground and by the personal property, those are the two elements that make it up, and by any other use to which the property can be put. That seems to be indicated by this district judge opinion from the District of Columbia that he cited, in which they point out that

where there is a divorcement of ownership between the real estate and the personal property, and it is necessary for an apportionment, you have to put a separate valuation on it. In this case of the San Diego Bank, it was a case where the bank owned the building and the vault, and, incidentally, in that connection I understand in a later case the county assessors have treated for taxation purposes the vault as being part of the real estate. Now, using that point, it just occurs to me that the county assessor in assessing an oil well assesses it in this manner: First, the mining rights. That would be the value of the oil in the ground, the oil recoverable; second, the personal property consisting of the derrick, tubing, [38] rods and the pumping equipment. Now, in so far as the tubing and rods are concerned, your Honor, that isn't a permanent part of the premises; those things hang in the hole, and in an ordinary well they are probably taken out maybe on an average of once or twice a year for the purpose of cleaning out the hole or for the purpose of removing a clog in the tubing, or a rod breaks and it is a simple matter just to pull it out of the hole, and you insert it back in. It hangs on a hanger. The derrick, it is common practice for derricks to be skidded off one location and moved to another location. Tanks, the same manner. In other words, even from the standpoint of fixtures, they are not so affixed to the real estate as to become a fixture. In this case we have a specific right on the part of the tenant to remove the casing, as well as the rest of the other personal

property, and you don't have that situation in any of the cases that counsel has cited.

Mr. Weymann: May I reply very briefly, your Honor?

We have, of course, no quarrel with the general proposition that these fixtures are trade fixtures and may be removed as between lessor and lessee. There is no question as to the statement of the law by Mr. Dechter in that regard. Our contention is, however, that it does not apply as between condemnor and condemnee. Mr. Dechter uses the illustration that a purchaser of this leasehold estate would not acquire [39] the personal property. Obviously because a purchaser of any property takes it subject to the covenants and conditions of the lease. A lessee and a lessor may agree that a building, even, may be personal property no matter how it may be affixed, and it depends entirely on the agreement between them. But when the government comes in and takes possession and condemns all of the property, as Justice Cardoza once used the expression, if there is such a thing as an original title, it is a title derived from a condemnation proceedings. [40]

The Court: Well, when you say condemns all the property, there is where the bone of contention is. If there was no question about all the property being condemned, then we wouldn't have anything to argue about. However, there might be a case. Suppose you brought your condemnation. Let us take the Treasure case, the one Judge McCormick had before him where the question as to the per-

sonal property was involved. The mere fact that you said you were going to take the land would not necessarily include the personal property. You say, "We are not interested in the personal property." You might say that. "We don't care anything about the personal property, all we want is just the land," and I think you might well take that position in some similar case. That is, you started out here. You say, "We are taking the land. We are taking the real property, and we are not interested in these other things." The condemnee might say, "Well, now, here is some property that is of no use to me. It is personal property. It is connected with the operation of the well and you ought to take it."

You might take the other side of it and say, "We don't want to take that because we are interested only in the condemnation of the land."

Mr. Weymann: That, as a matter of fact, is what was done. In many instances that surplus equipment was actually returned. [41]

The Court: What about these rods that were referred to? They are not attached in any way to the well or the derrick?

Mr. Weymann: They are part of the operating equipment under these cases.

The Court: Well, would a wrench be a part of the operating equipment, too?

Mr. Weymann: No, because it wasn't used for that particular well. A wrench can be used for any purpose.

The Court: So can rods, I assume, from what Mr. Dechter said.

Mr. Weymann: In a well, yes.

The Court: Then, what about the derrick? For example here, I think the court will have to take judicial notice that a derrick is ordinarily found in these oil fields in California and may be and usually is removed from the well site, and Mr. Dechter has made the statement that maybe he skidded from one location to another.

Mr. Weymann: That is correct, your Honor, and as between lessor and lessee there is no question about that. I used an unfortunate expression when I said "taking all the property."

The Court: That is what I had in mind.

Mr. Weymann: What I meant there was that we took the property of both the lessor and the lessee, so that as between the two parties, as between their respective rights, those were merged in the entire taking. When the Government comes [42] into possession, it does not come in as the successor in interest and subject to all the covenants and conditions. It comes in under the original proceeding, and that is precisely what was held in the cases which I have cited to the court.

Reference was made to Judge McCormick's opinion as to the equipment. As I attempted to point out before, that equipment is lying on the ground. It was not used in the operation of those wells. It was equipment which Mr. Brightwell had put there, drilling equipment which he was using or had used or intended to use in the drilling of other

wells. There is no question about this property being trade fixtures, but under the cases we believe trade fixtures pass with the realty in a condemnation suit.

The Court: What about the position Mr. Dechter has referred to "The action is to be construed as a sale between the grantor and the grantee"?

Mr. Weymann: Only to this extent, that the measure of compensation for the taking is that which a willing purchaser would pay to a willing seller, a reasonable time having been had——

The Court: That only refers to rules of evidence.

Mr. Weymann: It only refers to rules of evidence, but the Government is not in the position of a purchaser because the Government comes in under its paramount authority. It is [43] not a successor in interest of the rights of the owner. For example, suppose the property was held subject to various covenants and restrictions. The purchaser of that property from the owner would take it subject to the covenants and restrictions, but in a condemnation proceeding if all the parties were brought into the proceeding those covenants and restrictions would be wiped out and a new title would be taken. The Government is not in a position of a buyer.

The Court: Yes. I interrupted you. Now, have you anything further to add?

Mr. Weymann: Just this one more point. Under Section 1246 of the Code of Civil Procedure of the State of California, the property is to be

taken as a unit. While it is true that there may be, as Mr. Dechter said, an apportionment of the compensation as between lessor and lessee and the various interests in the unit taken, the condemnor is entitled to have the property taken valued as a whole and an entire award made.

The Court: All right. What effect does that have upon the date of the determination?

Mr. Weymann: Well, that has no effect on the date of the determination because that is dependent entirely upon the question of whether or not this equipment, this operating equipment was included under the original authorization.

The Court: Well, we are really arguing here, any way I thought you were originally to argue this so the court would [44] know what was the proper date for the determination of the value, whether it is September of 1942 or October of 1943. That is the question we started to argue here.

Mr. Weymann: That is correct, and our position is that the date is September 28, 1942.

The Court: That is the reason I am asking you about this. If it is to be determined as a whole, your position is that it must be as of September of 1942, but suppose Mr. Dechter's position is correct, your position being correct that it must be determined as a whole, then would it have to be determined as a whole as of October of 1943?

Mr. Weymann: I don't see how it can be, because there isn't any question but what the land was taken on September 28th.

The Court: There is no question but what the

other part was taken in October of 1943. Then, where are we?

Mr. Weymann: Well, then, as a matter of necessity, assuming that of course as a hypothetical situation, then as a matter of necessity it would have to be valued as of a later date.

The Court: Then the values would have to be separate?

Mr. Weymann: They would have to be separate because there would be two separate takings. We would have an analogous situation it would seem where you have a condemnation of an easement in certain land, we will say, and a subsequent [45] condemnation of the fee, or a condemnation rather of a leasehold, which is exactly what frequently happens. The Government comes in and takes the term of a year on property and then subsequently comes and takes the fee. There would have to be two separate proceedings.

The Court: Yes. Now, let us take this, Mr. Weymann. Suppose we have, as in our particular case here, the condemnation of the land beginning say on September 1942. Then, later on, by the amendment which we have, certain personal property is to be condemned. Let us just take that particular case which may not be involved here, but let us take that anyway. Then, there would have to be two separate valuations, wouldn't there?

Mr. Weymann: Yes, there would. I see no other out.

The Court: So then, in that event, there would

be a departure from the ordinary rule that there must be just one valuation?

Mr. Weymann: Yes, the unit rule.

The Court: I have asked you gentlemen to argue this for the enlightenment of the court. Is there anything else you would like to call attention to?

Mr. Weymann: I think not. I think our position is stated in those cases, and if I may submit the California citation on the other one?

The Court: Yes. I would like to have you do that, and [46] then you gentlemen look up this question of the sub-lease and let the court know about it as soon as possible.

Were you about to add something, Mr. Dechter?

Mr. Dechter: Yes, two things, your Honor.

The Court: Have you finished, Mr. Weymann?

Mr. Weymann: Yes, sir.

Mr. Dechter: Page 1 of the exhibit to the last amended complaint, which is the inventory, is headed "Union Oil Company of California Inventory of Materials and Supplies taken over by Defense Plant Corporation, September 29, 1942." Page 105 of the same exhibit is headed exactly the same way for the Treasure Oil Company. I am merely pointing that out in connection with Judge McCormick's decision.

Now, on the point of the analogy of vendor and vendee, my instruction No. 14, which is based on the United States Supreme Court case, says:

"In determining the market value of the property condemned for public purposes, the same con-

ditions are to be regarded as in a sale of property between private parties.”

The Court: Read that first part.

Mr. Dechter: “In determining the market value.”

The Court: Well, I think that is what Mr. Weymann contends. Isn’t that right, Mr. Weymann?

Mr. Weymann: I didn’t get that, if the court please. [47]

The Court: It seems to be a rule of evidence that he is referred to.

Mr. Dechter: I will read it again:

“In determining the market value of the property condemned for public purpose, the same conditions are to be regarded as in a sale of property between private parties.”

Therefore, my contention is that if there was a sale of lands between private parties, it would not include a sale of trade fixtures or personal property.

Mr. Weymann: May I make one observation, your Honor?

The Court: Yes.

Mr. Weymann: Mr. Dechter referred to this inventory and referred to the Treasure Company property beginning on page 105. The whole controversy with respect to the Treasure Company property was not that property on page 105, but solely on that property which is headed “Items deleted from the original inventory as not being needed in the Playa del Rey project.” The property in the well was not under consideration at all.

Mr. Dechter: Mr. Weymann, answer me this. Isn't it a fact that your office intervened in the State Court action and moved for its dismissal upon the ground that this court had exclusive jurisdiction in the condemnation matter over the same property? And, isn't it a fact that you asked Judge [48] McCormick in this very same case to enjoin the State Court from going ahead with that matter because it involved the same property that was covered in this condemnation matter?

Mr. Weymann: That is correct.

Mr. Dechter: And that is what Judge McCormick said.

Mr. Weymann: Yes, that is correct. Judge McCormick held that the property which was marked "Deleted" was not included in the condemnation.

The Court: If you have finished, I would like to ask you another question which I think may save some time in the actual trial, and that is as to whether you can agree upon the rule to be followed as to the reception of evidence, that is, as to the sale of other property, evidence of sales, whether it may be brought out on direct examination or upon cross examination. I have had some cases recently in which that matter has been discussed, and the attorneys have been able to agree.

Mr. Weymann: May I say this, your Honor, and in the first instance I am willing to stipulate that the highest and best use of that property is the use to which it was put by Mr. Block.

The Court: That will save time.

Mr. Weymann: So that will eliminate that question.

The Court: Do you agree to that, Mr. Dechter?

I will agree that is the highest and best use that Mr. Block put the property to, but I would not agree that it is the highest and best use to which the property might be put.

The Court: Then you don't agree?

Mr. Dechter: No, your Honor.

Mr. Weymann: No, we don't, then.

The Court: What about the question I asked?

Mr. Dechter: There was some confusion on that point up until two years ago when the legislature of California amended the Code by adding a new section which gives an expert on direct examination the right to give his reasons instead of waiting until cross examination.

The Court: Yes, but I want to tie it down to something more specific, that is, as to giving the evidence of the sales of other similar property. Usually that is brought out on cross examination. In cases I have had recently it has been agreed that it might be done either way, as the parties desire.

Mr. Weymann: I am willing to so stipulate.

Mr. Dechter: I will so stipulate.

The Court: That is, that it may be brought out either on direct or cross examination?

Mr. Weymann: Yes.

Mr. Dechter: So stipulated.

The Court: Very well. Court will recess until tomorrow [50] morning at 10:00 o'clock.

(Whereupon, at 12:25 o'clock p. m. Tuesday, July 24, 1945, an adjournment was taken until 10:00 o'clock a. m., Wednesday, July 25, 1945.)

Los Angeles, California,

Wednesday, July 25, 1945, 10 a. m.

(A jury was duly empaneled and sworn.)

The Court: All the others who have been summoned here to act as jurors are now excused. You will return when notified.

Is there to be an opening statement? If so, you may proceed.

Mr. Weymann: Yes, I think I desire to make an opening statement. At this time, however, if the court please, I would like to offer a stipulation that all the proceedings had yesterday morning and all of the evidence introduced may be considered as introduced in the course of this trial.

The Court: That is, those which were introduced?

Mr. Weymann: Those which were introduced.

The Court: In other words, you adopt the proceedings of yesterday as part of this trial?

Mr. Weymann: That is correct.

Mr. Dechter: So stipulated, and may I ask counsel for the Government to stipulate that the sublease owned by Sam Block provides in paragraph 9 thereof as follows:

“On termination of this sublease by the sublessor for any reason whatsoever, sublessee shall quitclaim and peaceably surrender to the sublessor these premises and thereupon sublessee shall be given 30 days to thereafter [53] remove any personal property and equipment placed on the premises herein subleased.”

Also, that paragraph 13 of said sublease provides as follows:

“Each and every term of the original oil and gas lease shall be binding upon the sublessee to the same purpose and to the same effect as if each and every term and condition thereof were fully set forth herein, and sublessee hereby agrees to comply with each and every term and condition thereof and to hold sublessor free of each and every obligation imposed by said original lease, and free and clear of all liability in any way pertaining thereto, and sublessee shall be entitled to all benefits of the said oil and gas lease which do not conflict with the express terms of the sublease; provided, however, that the terms of this paragraph shall apply only to the premises herein subleased.”

Mr. Weymann: So stipulated. [54]

Mr. Weymann: Mr. Dechter, may it be stipulated that this map of the area may be used for the purpose of identifying the property, subject to correction?

Mr. Dechter: I will so stipulate, your Honor, but in view of the fact that I haven't personally examined the map and rely upon Mr. Weymann, the stipulation would be subject to any correction I might make during the course of the trial.

The Court: Is that satisfactory, Mr. Weymann?

Mr. Weymann: That is perfectly satisfactory.

The Court: It is agreeable to the court.

Mr. Weymann: May we offer this as an exhibit for identification?

Mr. Dechter: No objection.

Mr. Weymann: Exhibit next in order.

The Court: It may be marked as Plaintiff's Exhibit No. 6 for identification.

(Whereupon, the document referred to was marked as Plaintiff's Exhibit No. 6, for identification.)

Mr. Weymann: I wonder if we may have the blackboard. Can you all see that map?

Ladies and gentlemen, or lady and gentlemen, to enable you to follow intelligently the evidence which will be produced before you, and upon which you will base your verdict in this case, it is necessary that you should have some idea of location, nature and extent of the property which is taken [55] in this proceeding in condemnation by the United States under its power of eminent domain.

Outlined here in red——

The Court: Mr. Weymann, may I suggest that you stand a little to one side so the court will have a full view?

Mr. Weymann: Yes. Outlined in red here is what is generally known as the Playa del Rey oil field. That is located north of Manchester Avenue about a mile from the Pacific Ocean. Are you familiar with those streets?

Here is Manchester Avenue running west, and here is Pershing Drive. Most of this property is on a hill——

The Court: Mr. Weymann, if you could do that from the other side it might be better. might be a little awkward, but I couldn't see what you were indicating.

Mr. Weymann: Here is Pershing Drive, and about a half mile further is the hill, palisades overlooking the Pacific Ocean.

Running down here is Culver Boulevard, and the old Pacific Electric Railway right-of-way to Manhattan Beach.

What is being condemned in this project is an underground natural reservoir for the conservation, the storage, injection and withdrawal of natural gas. Mr. Block owned certain interests in that property which I will describe, and for which he seeks and is entitled to receive compensation, just compensation. [56]

In the ordinary condemnation proceeding we deal with ordinary real estate; that is, property which is subject to view, which is on the surface, and which consists of perhaps a lot of buildings, improvements, and perhaps some property. We have a more difficult situation here, because the property involved in this particular trial consists of certain mineral rights and oil lying 6,000 feet under the ground. Mr. Block has certain interests in those mineral rights.

The evidence in this case will, in the first instance, serve to dispel some popular notions with regard to the nature of an oil deposit. Many people imagine that oil is found underground in a pool or a lake or in a river. That is not the case.

The oil which is recoverable in an oil well is contained in a sand or sandstone or limestone of a sparse coat which is saturated with oil and gas and to some extent water, laid and overlaid with layers

of impervious rock which prevents its escape to the surface. Perhaps an illustration will serve to show what is meant.

We may take a five-gallon bucket of sand and fill it to the top with sand so that no more can be put into it and yet you may pour into that a fluid, oil or water, which is absorbed and taken up without increasing the volume. That is dependent upon the porosity of the sand, that is, the spaces between the grains of sand. Now, in that way oil and gas are found in a subsurface condition. The oil is usually associated with gas under pressure so that if a well is drilled from the surface down to the oil sands and a vent left for raising it to the surface, the internal pressure, the pressure of the gas, will force or compel the oil to flow to the surface and there you have a flowing well.

Now, as that oil is gradually withdrawn together with the gas, the pressure decreases and then the well has to be put on the pump, and it is pumped until it reaches a state of depletion. That is the stage at which the amount of commercial oil and gas which may be recovered no longer is sufficient to justify the cost of raising it to the surface and making it salable, and in that event, of course, the well is abandoned. [58]

Now, the term "abandonment" used in the oil industry has a special and peculiar significance which the evidence will disclose here. It means something more than just walking away and leaving it, and you will hear a number of technical terms which so far as possible the witnesses will explain.

Now, for a man to drill a well and produce oil from it, it is necessary for him to have a drill site or a well site. That means that he must either own the land over the surface and the surface, or he must make some arrangement with a man who does own it. That gives rise to an oil and gas lease. An oil and gas lease simply means this, that the owner of land overlying an oil-bearing structure or oil-bearing sands, or believed to be oil-bearing, enters into an agreement with a man who will drill or produce, or attempt to produce oil, and in consideration of that right, the owner will receive a certain proportion free and clear of the cost of operation of the oil and gas produced, which is called the land owner's royalty which varies according to the field and according to the location and the condition. In this instance it will be shown that the land owner's royalty was $1/6$ th of the oil and gas produced.

That is the land owner's royalty, and in consideration of that a lease is executed which enables the operator to produce that well so long as oil and gas is produced in paying quantities. Now, sometimes, as in this instance, the man who owns [59] or who has acquired the original lease, the right to produce the oil, does not drill any wells but he subleases to someone else, as in this instance.

The evidence will show that there was an original lease, a master lease called the Spangler lease on this property outlined in green, excluding however those lots which are marked in green. The original lease, the Spangler lease, was made on a $1/6$ th

royalty. Mr. Spangler in turn subleased portions of his lease to the Colly Oil Company on a 30 per cent royalty. That is, the Colly Oil Company would pay the land owner the $\frac{1}{6}$ th royalty and would pay the sublessor, Mr. Spangler, the difference between the land owner's royalty and the 30 per cent, that is, 13 and $\frac{1}{3}$ rd per cent. That is called an "overriding royalty." The only difference between the land owner's royalty and the overriding royalty is this, that the land owner's royalty goes on indefinitely as long as oil and gas can be produced, but the overriding royalty continues only so long as the lease, as the master lease in which the overriding royalty is reserved, is in good standing.

By two subleases, Mr. Spangler subleased to the Colly Oil Company these drill sites or well sites marked here in purple, and these dots here show the two wells drilled by the Colly Oil Company. One, at the time the Government took it over, was a producing well and that well which is located here is now known, or was at the time the Government took it, as [60] Block's No. 10, I believe. So, Mr. Block now claims compensation for the value of his sublease, that is, for the value of the right to produce the oil from that sublease and the royalty of 30 per cent.

However, Mr. Block also has another interest. That is, he has a portion of the original overriding royalty which he purchased, and to return, I said that these subleases were made to the Colly Oil Company. Then, Mr. Block subsequently purchased from the receiver of the Colly Oil Company all the

right, title and interest of the Colly Oil Company in these leases and subleases and now owns them.

Mr. Block also owns of the overriding royalty 10 7/12th per cent of the total production, remembering that Mr. Spangler in his sublease had reserved the overriding royalty being the difference between 1/6th and 30 per cent, the 10 7/12ths, then of the total production Mr. Block owns as an overriding royalty, and evidence will be introduced as to the value of that separate and apart from the value of his sublease and his equipment thereon.

As the court has informed you, in a condemnation suit the order of proof is reversed, that is, the defendant puts on his case first and shows his conception of value, and then the plaintiff offers its evidence in rebuttal.

I think that about concludes what I have to say, if the court please.

The Court: Mr. Dechter, do you desire to make a statement at this time or at a later time?

Mr. Dechter: I would just as soon make it now, your Honor.

The Court: Very well.

Mr. Dechter: May it please the court, and lady and gentlemen of the jury. On or about September of 1942, as Mr. Weymann has informed you, Mr. Block was the owner of an oil and gas leasehold embracing two parcels of property which are designated as parcels 87 and 103. Both of those parcels were included in what is known as the Playa del Rey oil and gas field.

There had been two wells on each of those par-

cels. However, in September of 1942, only one of those wells was in operation and producing oil, and one day in September, Mr. Block went to his well and he was told that the well was no longer his, that the government had taken it over. About a month later a complaint was filed in this matter in condemnation, but that complaint was not served and was amended some [62] time about a year later, and the amended complaint was served on Mr. Block.

Under that amended complaint it is recited that the government in order to relieve a shortage of gas which would impede the war effort—apparently, as you all know, during the winter in Southern California there usually is a shortage of gas, and during normal times the industrial plants have been penalized so that the homes would get the gas that is necessary, but during the war the industrial plants had to have this gas, so the government, in its wisdom, decided to take over this entire field and use it as an underground gas reservoir, instead of buying a lot of land and building tanks to store gas on the surface.

Mr. Block didn't have this well for sale, but when the government wants something it has a right to take it, and the only limitation is under our Federal Constitution the government must pay full and just compensation for such property.

In their complaint they state that what they desire to take is not only the real property but the personal and mixed property. In their complaint they state the desire to condemn both the full fee

simple title and also title to all the personal property and trade fixtures located on said real property.

The Court: You are now referring to the amended complaint? [63]

Mr. Dechter: Yes, your Honor; paragraph 8 and paragraph 10.

The Court: Well, I only call attention to that because you first said there was a complaint and then an amended complaint. You are now referring to the amended complaint?

Mr. Dechter: Yes, that is the only complaint we have seen, your Honor.

The Court: I just want to make it clear for the record.

Mr. Dechter: Thank you. It will be your province from the evidence that is introduced here to try to place, or, rather, make Mr. Block whole, that is, by giving him what would be a full and fair valuation. If he had desired to sell said property on that date, in arriving at that valuation you are to take into consideration all available uses to which the property might be put.

The Court: I think you are going more into the matter of the instructions of the court as to the evidence that may be received, Mr. Dechter.

Mr. Dechter: Maybe your Honor is right. At any rate, the answer filed by us sets forth that we have this leasehold interest which is subject to a total landowner's and over-riding royalty of 30 per cent, and that is conceded by the government that we own that interest; that we also own 10 7/12 per cent of the sublessor's or overriding royalty.

In other words, Mr. Block has acquired and now stands in a [64] sort of dual position; he is also the lessee and in a way he is also partly the sublessor or landlord of this sublease, so that particular overriding royalty or sublessor's interest has to be valued separately, and the government will agree with me on that point that that will require a separate valuation.

Then there is the personal property and trade fixtures which are located on this well and which are used in connection with the operation of the well. In that regard the court will instruct you as to how you are to place your valuation on that property and as of what date that valuation shall be fixed. I believe that covers it, your Honor.

The Court: The court will take a recess at this time and the court admonishes the jury that at this recess and at all others it is their duty not to converse among themselves nor to suffer any one to address them upon any subject connected with the trial, and not to form or express any opinion thereon until the cause is finally submitted to the jury. This is not just a formal admonition to be listened to and not heeded, but it is one that must be heeded very carefully. It is very important that this be heeded in its entirety by the members of the jury. I may say that sometimes during the course of a trial, and particularly if the trial is extended, when you are away some one may come up and start to talk with you about the trial. It is done innocently in most cases. [65] But if that hap-

pens, just say, "I am on the jury and I can't talk with you."

You are now excused for a few minutes. You may retire to the jury room, and you will return when called by the bailiff.

(A recess was taken.)

The Court: The jurors are all present and in their places, is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: You may proceed.

Mr. Dechter: Call Mr. Block.

SAM BLOCK,

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name is Sam Block?

The Witness: Sam Block.

Direct Examination

By Mr. Dechter:

Q. Mr. Block, you are the defendant in this case? A. The defendant, yes.

Q. And you are the owner of parcels 87 and 103, described in the amended complaint filed in this matter? A. Yes, sir.

Q. And those parcels consist of subleases on the real [66] property described in the amended complaint. A. Yes, sir.

(Testimony of Sam Block.)

Q. And those subleases are subject to 30 per cent landowner's and sublessor's royalty?

A. Yes, sir.

The Court: Will you talk out a little louder, please, Mr. Block?

The Witness: Yes.

Q. By Mr. Dechter: On one of those subleases is located a well known as Block Well No. 10?

A. Yes.

Q. And on that well in September of 1943, '42, rather, was there personal property, machinery and equipment, used in connection with the operation of that well?

A. Yes, sir.

Q. And that personal property is the personal property described in the exhibit attached to the complaint, being Exhibit C?

The Court: Are you referring to the amended complaint?

Mr. Dechter: Yes, your Honor.

The Court: I think it would be better for you to designate it.

Mr. Dechter: An amended complaint?

The Court: Yes; because of some controversy of which you are aware, I think it would be better to so refer to it. [67]

Q. By Mr. Dechter (Continuing): Which personal property is set forth on Exhibit C of the amended complaint, pages 1, 2, 3 and 4, and which is headed "Inventory of Material and Supplies Taken Over by Defense Plant Corporation, Septem-

(Testimony of Sam Block.)

ber, 1942, Block Oil Company, 1055 South LaBrea Street, Los Angeles?"

Mr. Weymann: Just a moment. If the court please, it was my understanding, I believe, that we were to consider now only the overriding royalty until the court determined——

The Court: I think it would be advisable if that could be done.

Mr. Dechter: I didn't make any such understanding. I told the court in chambers that I would not prefer to try it piecemeal, I would rather try the whole thing, and there was no decision made on that point. That is my understanding of what took place in chambers.

The Court: Well, my understanding is the same as Mr. Weymann's; but then you won't be bound by that, Mr. Dechter. My thought was that we would first consider the valuation as to the overriding royalty; that as to the other two items, they could be considered at a little later time, further in the course of the trial. Mr. Dechter, you may proceed in your own way.

Mr. Dechter: Very well. May I have the question?

(The question was read.) [68]

A. Yes, sir, with the exception they overlooked, they forgot to put in 2,000 barrels oil tanks in this inventory. [69]

Q. By Mr. Dechter: In other words, at the time that the Defense Plant Corporation took over your property, there was also on the real property and

(Testimony of Sam Block.)

used in connection with the oil well, two 1000-barrel tanks?

A. Yes, sir.

Q. What were those tanks used for?

A. To pump the oil in.

Q. For the purpose of storing oil produced from the well until such time as the purchasing company removed the oil from those tanks?

A. Yes, sir.

Q. And on or about September of 1942, at the time the Defense Plant Corporation notified you they were taking over your property, what had this Block well No. 10 been producing?

A. 25 barrels per day.

Q. And in addition to your owning this leasehold subject to 30 per cent and the personal property described on Exhibit C of the amended complaint, supplemented by the two tanks which you have mentioned, did you in addition also own a part of the sublessor's or overriding royalty?

A. Yes.

Q. You owned how much?

A. 10 and 7/12ths per cent.

Q. 10 and 7/12ths per cent? A. Yes. [70]

Q. Now, calling your attention to that 10 7/12ths per cent of the gross oil and gas from Block Well No. 10, do you have an opinion as to the value—withdraw that.

What is your business?

A. Producing oil and oil well equipment.

(Testimony of Sam Block.)

Q. When you say oil well equipment, what do you mean?

A. I am in that business of buying pipe, casing and machinery.

Q. You have been in the business of buying and selling and rendering oil well machinery and equipment?

A. Yes, for the last ten years.

Q. For how long?

A. For the last ten years.

Q. Here in Los Angeles?

A. Los Angeles and Bakersfield, both.

Q. How long have you been engaged in the business of owning and operating oil wells?

A. About the same time.

Q. And being engaged in that business, you have become familiar with what people ask and what people receive for oil wells, overriding royalties and oil well machinery and equipment?

A. Yes, sir.

Q. Do you have an opinion as to what the leasehold interest owned by you, subject to 30 per cent land owner's and overriding royalty, was worth, or the fair market value on [71] or about September of 1942?

A. I would judge around \$600.00 a unit.

Q. I am talking now about the leasehold interest.

A. Oh, the leasehold interest. You mean the equipment?

Q. Do you have an opinion? First answer yes or no.

The Court: He doesn't understand the question,

(Testimony of Sam Block.)

apparently from his question, so you had better start in again.

Mr. Dechter: Very well, sir.

Q. Calling your attention now to the leasehold interest which you own in Parcels 87 and 103, subject to 30 per cent landowner's royalty, do you have an opinion as to what the fair market value of that leasehold was, subject to 30 per cent land owner's and overriding royalty?

The Court: I think you had better state the date.

Mr. Dechter: As of September, 1942.

The Witness: Yes, sir.

Q. By Mr. Dechter: And what, in your opinion, was the fair market value of the leasehold interest subject to that 30 per cent landowner's and overriding royalty as on September of 1942?

A. \$35,000.

Q. And does that valuation include the value of the personal property and fixtures?

A. No, sir.

Q. And what in your opinion was the value of the [72] personal property and fixtures set forth in Exhibit C of the amended complaint, adding thereto the two storage tanks you have mentioned?

A. \$22,000.

Mr. Weymann: I didn't get that answer.

(Answer read.)

Q. By Mr. Dechter: What in your opinion was the fair market value of the 10 7/12ths per cent gross overriding royalty in September of 1942?

(Testimony of Sam Block.)

A. \$6,000.

Q. I will ask you, Mr. Block, if you know whether the demand for oil properties was greater than the supply in the year 1942 or particularly about September of 1942?

The Court: What is the purpose of that question?

Mr. Dechter: The purpose is to show, your Honor, that there was a large demand for oil properties and a very few oil properties available at that time.

The Court: What materiality would that have?

Mr. Dechter: Well, it goes to the market value.

The Court: Wouldn't that be more a matter of cross examination? This witness has not only qualified himself to testify as to the value as of September of 1942, but he was the owner of the property. So, he was qualified on two bases. This other, it appears to the court——

Mr. Dechter: I think, your Honor, I don't care to press [73] it, but I think under the new section of the Code of Civil Procedure if a person testified he is an expert, he is permitted to give his reasons as an expert.

The Court: Yes, but you are asking him something that is not involved in that type of question.

Mr. Dechter: Very well.

The Court: If you want him to give his reasons, you may have him do so. He has a right to do that.

Mr. Dechter: You may take the witness.

(Testimony of Sam Block.)

Cross Examination

By Mr. Weymann:

Q. Mr. Block, how did you arrive at the valuation of \$35,000 as the value of your leasehold interest?

A. I arrived by multiplying so many barrels per year and the life of the well would be at least ten years, and by multiplying it, it would be that amount.

Q. Then, will you give us those figures, please?

A. 365 days at 25 barrels per day. That would be 9,125 barrels per year.

Q. Yes?

A. At 94 cents per barrel would be \$8,577.50 per year.

The Court: What was that last?

(Answer read.)

The Court: Proceed. [74]

The Witness: Now, you multiply that by ten years, the life of the well, which is \$8,575.00, less 30 per cent royalty off.

Q. By Mr. Weymann: What?

A. \$8,575.00 less 30 per cent royalty off. It comes to \$60,032.50.

The Court: What?

The Witness: \$60,032.50, and the rest of it I have allowed for operating expense. [75]

The Court: You allowed roughly \$25,000.00 for operating expense, is that correct?

The Witness: Pretty close to that, your Honor.

(Testimony of Sam Block.)

Q. By Mr. Weymann: Mr. Block, do you know what the operating costs a barrel were?

A. No, I didn't go into details on it, of figuring out exactly per barrel; but I think it cost around 45 cents, 40 cents a barrel.

Q. Operating cost?

A. About 40. I don't know, I never kept track of it.

Q. You don't keep books of account?

A. Yes, I do, but we don't break it down exactly to the barrel.

Q. You don't break it down to the barrel?

A. No. I have no company; I am all by myself.

Q. You just kept your operating costs per year?

A. Yes.

Q. In September, at the time this well was taken over, was that well producing 25 barrels a day?

A. Yes, sir; and I could have produced more if I would have used—I have what you call a vacuum compressor.

Q. You may explain that.

A. I have a vacuum compressor which I haven't used it. I could have produced more oil than what I had produced.

Q. But you produced 25 barrels. [76]

A. Yes.

Q. And what gravity oil was that?

A. About 19 gravity at that time.

Q. And did you receive the posted market price for that oil at that time? A. Yes, sir.

(Testimony of Sam Block.)

Q. Which was how much?

A. Well, that year was only around 75 cents per barrel.

The Court: What year is that?

The Witness: In '42 it was only 75 cents. But she jumped.

The Court: What year was that?

The Witness: '42.

Q. By Mr. Weymann: So that in 1942 you received 75 cents per barrel?

A. About, yes.

Q. Mr. Block, you have testified that you have been in the oil business for 10 years producing wells, and you have computed that that well produced 25 barrels a day for 365 days. Is it not a fact that the production of that well has steadily declined?

A. I don't think so. Not according to our books it didn't decline. In fact, I could have made a better well out of it.

Q. Do you know whether it has declined or not?

A. No, sir.

Q. It has not?

The Court: I don't believe he understood the question. Read back the last couple of questions and answers.

(The record was read.)

The Court: Did you mean to say that you didn't know whether it had declined or not?

The Witness: I have had it. It hasn't declined since I have had the well; but what they had be-

(Testimony of Sam Block.)

fore, I don't know, what the well was doing a year or two years before, I don't know.

The Court: You meant that you don't know whether it has declined or not? That is your answer?

The Witness: That is the answer.

The Court: I misunderstood it. I thought you were not answering it as it appeared that you were.

Go ahead, Mr. Weymann.

Q. By Mr. Weymann: How long have you owned that well, Mr. Block?

A. I bought it in about February, 1942.

Q. Am I to understand from your answer that you had no knowledge of the production prior to that time? A. No, I haven't.

Q. You have no knowledge of the production?

A. No. [78]

Q. You don't know what the well was brought in at? A. No, I don't.

Q. In your experience as an oil operator, Mr. Block, is it not a fact that the production of an oil and gas well when it approaches a period, its economic limit, that the production declines?

A. May I answer it, your Honor, a little differently?

Mr. Dechter: Your Honor, I don't understand the question myself. I think the question is ambiguous.

The Court: It isn't very clear to me, Mr. Weymann.

(Testimony of Sam Block.)

Mr. Weymann: I will reframe the question.

Q. By Mr. Weymann: From your experience as an oil operator, can you say whether or not an oil well which approached its economic limit, that is, in the last few years of its production, declined in the amount of oil produced, that is to say, does the oil produced remain constant throughout the entire life of the well?

Mr. Dechter: We will object to it, your Honor, upon the ground it is a compound question. I don't know what part the witness is going to answer. I think it ought to be segregated so the court and jury and I can understand just what part is being answered.

The Court: I believe it is compound, Mr. Weymann. Let's see if the court can suggest a question that might serve to clarify it somewhat. [79]

We speak of the life of a well, that means the time of its economic production, that is, when it pays to produce the oil; that is correct?

The Witness: Yes, that is correct.

The Court: Now, toward the end of the life of a well, does it decrease from its peak production?

The Witness: Well, that is a question, your Honor, I would like to explain just a couple of words. My experience in the oil field, I happened to own quite a few wells, about 10 wells, and I bought them run down and have improved each one of them during my time that I got ahold of them in production by working on them. It just

(Testimony of Sam Block.)

depends how they are taken care of. That is my experience.

The Court: Generally speaking, there is the life of a well, that is, it produces over a certain period of years?

The Witness: That is what they say in the oil field, but I didn't have that experience.

The Court: Go ahead, Mr. Weymann.

Q. By Mr. Weymann: Mr. Block, how do you arrive at the figure of \$6,000.00 for the overriding royalty? A. \$600.00 a unit.

Q. How much? A. \$600.00 a unit.

Q. How do you arrive at \$600.00 a unit?

The Court: What is a unit? [80]

The Witness: Well, one royalty, two royalty.

The Court: One per cent?

The Witness: One per cent, that's right.

Q. By Mr. Weymann: How do you arrive at \$600.00?

A. I know in some fields they are asking as high as \$1500 00 a per cent, in some fields, some wells.

Q. Speaking of this field.

A. I arrived at the value of the production and so forth.

Q. What I want to know from you, Mr. Block, is how you figured \$600.00 per unit and not \$500.00 or \$1,000.00 or \$1500.00, or \$50.00.

A. On the basis of the income, Mr. Weymann.

Q. On the basis of the income? A. Yes.

Q. What was the income?

(Testimony of Sam Block.)

A. Well, I just gave you the figures.

Q. You gave me the total valuation. What was the income from the overriding royalty?

A. I didn't break that down, Mr. Weymann. I didn't break that down, the income. I know I paid—for instance, I paid that company in Hollywood, they had about 16 per cent, I can't think of their name, Bisma was connected with it, Hollywood Guarantee—

Q. In other words, I understand, then, Mr. Block, that [81] you have no way of segregating the income from the overriding royalty from your operating—

The Court: Mr. Weymann, I think you interrupted him before he finished. I think he was about to say what he paid to the owner.

The Witness: I used to pay between \$135.00 to \$140.00 a month

The Court: Now, you say you used to. What year?

The Witness: From the time I got ahold of it.

The Court: From February of 1942 up to September 28th? Which is it, 28th or 18th?

The Witness: 28th.

The Court: 28th of September, 1942?

The Witness: 1942, yes.

The Court: During that time you paid to the owner each month, to the owner of 16 2/3, royalty of how much?

The Witness: \$130.00 to \$135.00; it depends.

The Court: \$130.00 to \$135.00 a month?

(Testimony of Sam Block.)

The Witness: Yes.

The Court: It varied according to the production?

The Witness: Yes.

Q. By Mr. Weymann: The landowner's royalty of \$130.00 to \$135.00 per month.

A Pardon me. You see, the advantage of owning a royalty, you are exempt from income tax on it, too. [82]

Q. By Mr. Weymann: Let me ask you this: Is that subject to the dehydration charge, or inclusive of it?

The Court: Do you think that statement ought to be allowed to stand, "it is not subject to any income tax?"

Mr. Weymann: No. I move to strike that.

The Court: Because I think you might agree, if that is important, that there is a percentage of deduction that is allowed, but it isn't 100 per cent.

Mr. Dechter: That is correct. It is 27½ per cent that is tax-free.

The Court: Well, that answer may go out. Mr. Weymann, is it stipulated that the deduction is 27½ per cent?

Mr. Weymann: It is stipulated that the deduction is 27½ per cent. But I don't see the materiality of it.

The Court: As to the matter of its materiality, this witness volunteered it, you didn't state any grounds for your motion to strike.

Mr. Weymann: Very well

(Testimony of Sam Block.)

Q. By Mr. Weymann: Mr. Block, in estimating the income from that leasehold estate, which you stated to be \$35,000.00, you need, of course, operating equipment in order to produce that income, do you not? A. Yes, sir.

The Court: Mr. Weymann, it is just 12:00 o'clock, and before you start on another phase of this cross-examination [83] I think it would be well to take our noon recess. The court, accordingly, will take its recess at this time until 2:00 o'clock. During this recess the jury will bear in mind the admonition of the court heretofore given. You will return at 2:00 o'clock this afternoon.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock of the same day.)

Los Angeles, California,

Wednesday, July 25, 1945, 2:00 p. m.

The Court: The jurors are all present, is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: First, I want to say that I beg pardon for being late, but I was involved in some important business of the court.

Mr. Weymann: May counsel approach the bench, your Honor?

The Court: Yes.

(Thereupon, counsel approached the bench, and a discussion was had out of the hearing of the jury and off the record.)

Mr. Weymann: Will you read the last question and answer, please?

(Record read.)

SAM BLOCK,

called as a witness by and in behalf of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination—(Continued)

By Mr. Weymann:

Q. And in making that estimate of \$35,000.00, Mr. Block, did you contemplate the use of the equipment which was [85] on the well at the time you last operated it when the Government took it over?

A. I don't quite understand that question.

The Court: Read the question, please.

(Question read.)

The Witness: I don't get it.

The Court: Reframe the question. He apparently doesn't understand it.

Q. By Mr. Weymann: Mr. Block, in order to produce this oil, the future production which you valued at \$35,000, it was necessary, you had in mind that it was necessary to have equipment, pumping equipment, casings and rods and tubing to produce that. Now, in arriving at that figure, did you have in mind the use of the equipment which was on the well when the government took it over?

(Testimony of Sam Block.)

A. Well, you got to have equipment in order to produce.

Q. Well, was your \$35,000 figure based on the use of that equipment? A. No.

Q. Well, in that event what equipment would you use?

A. Well, you got to use pumping equipment in order to operate, but this equipment I didn't—you mean to depreciate it or anything like that?

Q. Well, let me try to reframe the question again. You estimated the value of the future production at \$35,000? [86] A. That is right.

Q. Was that based on the use of the equipment which was in the well or similar equipment?

A. I just based it on the production of the oil.

The Court: Well, how were you going to get that oil out of the ground?

The Witness: I had the equipment.

The Court: You had the equipment?

The Witness: Yes.

The Court: And that is the equipment that was there when the Government took possession. Is that correct?

The Witness: Yes, sir.

The Court: Did you intend to use that same equipment?

The Witness: Sure.

Q. By Mr. Weymann: Mr. Block, you estimate the future production from that well at 10 years?

A. Yes, sir.

Q. Will you tell the jury, please, how you ar-

(Testimony of Sam Block.)

rived at a period of 10 years, rather than 20 or 15 or 5 or some other figure?

A. The reason why is I have got other wells in Venice that I have had for over 8 years, and it don't show any depletion whatsoever.

Q. Those wells that you refer to are not in this field? A. Just down the hill.

Q. But they are not in the Playa del Rey field?

A. Yes, it is all called the Playa del Rey field.

Q. Do they produce from the same zone, same horizon? A. That I don't know.

Q. So if they produced from another oil horizon they would not be comparable, would they?

A. I don't know that.

Q. But you merely estimated it at 10 years by reason of the fact that you had wells in the Venice field which had produced for 8 years?

A. Since I had them.

Q. Mr. Block, the production of that well which I believe you stated to be 25 barrels per day, did you file reports with the Division of Oil and Gas on your monthly production? [88]

A. I didn't personally, but my operator who worked on the wells, he turned it over to my accountant. Not personally I didn't take charge of that.

Q. You didn't operate the well yourself?

A. No; I had a man take charge of that.

Q. Did you examine those to see whether they were correct or not?

(Testimony of Sam Block.)

A. No, I really didn't, to be very frank with you.

Q. Then you are unable to say whether those reports truly reflected the production or not?

A. I do not.

Q. In stating a production of 25 barrels per day, are we to understand from that that includes only clean oil or total fluid? A. Clean oil.

Q. Do you know how much water was produced?

A. No, I didn't keep track of that. I left that to the operator.

Q. Do you know whether or not a substantial amount of water was produced?

A. It was making water, all right.

Q. It was making water?

A. It was making water, yes.

Q. And would that, in your opinion, affect the cost of production? [89] A. It costs more.

Q. It would cost more?

A. Cost a little more.

Q. The more water you raised in proportion to oil the more it would cost? A. Yes.

Q. You estimated the value of that by taking a figure of 94 cents per barrel. I believe you testified that you received 74 cents per barrel?

A. The first year.

Q. What did you receive at the time the government took it over?

A. Just about that, 75 cents.

Q. Why then, did you use a figure of 94 cents?

(Testimony of Sam Block.)

A. Because we got the raise right afterwards, in about a few months afterwards.

Q. Was that raise gotten before the government took it over or afterwards?

A. It was after the government took it over. I am not sure, but I think it is. I am not quite sure.

Q. You don't recall, is that your answer?

A. No, I don't quite recall.

Q. You testified that you paid approximately \$135.00 per month landowner's royalty, that is approximately?

A. By looking over the checks I just noticed that. [90]

Q. And if my arithmetic is correct, that would amount to about \$8.00 a per cent, is that right?

A. I guess so, if you figure it out.

Q. Then, the overriding royalty on the same basis would amount to approximately \$85.00 per month, is that correct?

A. I couldn't say that, because I didn't break it down.

Q. Did you keep any separate records?

A. Well, the government had it for over three years and the records some way or another we haven't been able to find. I have been looking for it.

Q. At the time you operated it?

A. We did keep a record at that time.

Q. And you are unable to say how much the overriding royalty was per month?

A. I am. I happened to look over the checks

(Testimony of Sam Block.)

that I paid that time the Hollywood Guarantee and I happened to notice it the way it ran for quite a few months that way, for six months or so.

Q. Mr. Block, didn't you keep definite records to ascertain whether or not the well was a paying well or not?

A. Well, the only record I have, Mr. Weymann, is at the end of the month I deduct my expenses and how much is left over every month; the first of the month we pay everybody off, and the end of the month from all the 10 wells whatever is left over.

Q. From all of the 10 wells together?

A. Together, yes.

Q. But you kept no separate record from this No. 10?

A. We kept records on every one of them, but I couldn't find the record from three years back.

Q. That is the three years in which you operated the well?

A. Three years ago I operated the well. It has been three years since the government had it.

Q. And you can't find the records from the last year of your operation?

A. I cannot. I was asking my man and he said he lost them.

Q. Will you make a further search, Mr. Block, and if you can find them, produce them in court?

A. I will try to.

Q. You mentioned something about putting in a vacuum system to increase the production of that well.

A. Yes, sir.

(Testimony of Sam Block.)

Q. Will you please explain to the jury just what that is?

A. That is a compressor vacuum——

Q. Talk to the jury.

A. It is a compressor vacuum right on the top of the casing, on the top of the floor, and I had it there, but only [92] my neighbors on all the wells surrounding me, they asked me not to use it because somehow they feel like it takes away some of their oil, you see, so to be neighborly I didn't use that vacuum. But I had it there, it was standing——when the government took it over it was there right on the well, but I didn't use it. But it can be produced 10 barrels a day, at least, more by using that vacuum.

Q. Would that be true if the adjoining wells also used a vacuum?

A. Maybe they did, I am not sure.

Q. Well, I mean if they had. In other words, to use a homely illustration, here is a glass of lemonade with a number of straws in it, and the one that can suck the hardest will get it first. Is that it?

A. Yes, that is right.

Q. What does a vacuum system of that kind cost, Mr. Block?

A. I think new it will cost, installing and everything, will cost \$1,000.

Q. \$1,000?

A. Yes, between the installing and everything.

Q. When you made this valuation to which you have testified, Mr. Block, so we can get this thing

(Testimony of Sam Block.)

clear in our own minds, was that the estimate of what the well was worth to you or what you thought a willing buyer would pay for it in the event that you were willing to sell it?

A. I never sold any wells.

Q. You never sold any wells?

A. I don't sell any wells.

Mr. Weymann: Will you read the question, please?

(Question read.)

The Witness: I never cared to sell any wells. I always [94] liked to buy them.

The Court: Just answer the question yes or no, and then you may explain your answer if it is necessary.

The Witness: I would say what it was worth to me.

Q. By Mr. Weymann: Then, the figures to which you have testified are based on what it was worth to you?

A. Yes, sir.

Q. Now, when you bought the Colly No. 1 and the Colly No. 2 wells, you bought the equipment which was in those wells at the same time, did you?

A. Yes, sir.

Q. And you paid a lump sum for both?

Mr. Dechter: To which we will object on the ground that it is immaterial how or under what system he bought the well. What might have happened in one case would have no bearing on the fair market value in the average case.

(Testimony of Sam Block.)

Mr. Weymann: It is a preliminary question, your Honor. I want to develop it further.

The Court: The objection is overruled, it being preliminary.

Q. By Mr. Weymann: Will you answer the question, please? A. What was the question?

Mr. Weymann: Will you read the question, please?

(Question read.) [95]

The Witness: Yes, sir.

The Court: Pardon me just a moment, Mr. Weymann. Mr. McLay has brought in the pads, I see. You may distribute one to each of the jurors, Mr. Welch, please. You may use those if you desire to make any notes regarding the evidence. It is difficult for you to keep all these figures in mind. That is the reason for giving you these pads.

You may proceed.

Q. By Mr. Weymann: When acquiring those wells, Mr. Block, did you receive an inventory or a bill of sale of the equipment that went with it?

A. Yes, sir.

Q. And since you acquired the well, have you added any equipment to it?

A. To some extent.

Q. Well, to what extent? What items?

A. For instance, when you are pulling a well, you got to add to it rods and tubing. They may have found some bad tubing in there and when we pull it we add to it a certain amount.

Q. How often did you do that, Mr. Block?

(Testimony of Sam Block.)

A. Sometimes twice a year.

Q. Sometimes twice a year, since you acquired the well?

A. Oh, yes. I pulled them several times.

Q. And how long would that take? [96]

A. Oh, it would take some time. If you can't get out, you got to wait sometimes two weeks.

Q. And you would have to replace the tubing with new tubing? A. Some times, yes.

Q. I see. Do you know whether the equipment which was in the well when you acquired it was new or secondhand equipment?

A. It was used.

Q. It was used equipment?

A. When I bought it.

Q. Do you know how long it had been used?

A. No, I don't.

Q. You don't know. Well, now, you testified in making your estimate of the production from that well on which you based the valuation, you estimated ten years or 3,650 days, that is, 365 days. You didn't make any allowance in that, did you, for down time for repairs, pulling tubing?

A. No, I did not.

The Court: Will you read the question and answer, please?

(Question and answer read.)

The Court: Down time?

Mr. Weyman: Time when the well was off production.

Q. Have you any opinion as to the value that

(Testimony of Sam Block.)

the [97] equipment would have at the end of the productive period?

A. If the O. P. A. would take the prices off, it would be more today than when I bought it.

Mr. Weymann: I move to strike that.

The Court: It may go out as not responsive.

Mr. Weymann: Will you read the question, please?

(Question read.)

The Witness: I do.

Q. By Mr. Weymann: And what would that be, Mr. Block?

A. It would have the same value as when I bought it with the exception of the engine.

Q. In other words, with the continued use of it, it would not depreciate in value?

A. No, it would not, with the exception of the engine.

The Court: Would you read the answer?

(Answer read.)

Mr. Weymann: Will you speak up a little louder?

Q. Mr. Block, are you familiar with the regulations of the Division of Oil and Gas on the abandonment of a well?

A. Yes. They give us instructions on it.

Q. They give you instructions? A. Yes.

Q. Do you know what they require?

A. Yes, I do.

Q. Will you tell the jury, please? [98]

(Testimony of Sam Block.)

A. I couldn't give you——

Mr. Dechter: That is objected to on the ground that it is incompetent, irrelevant and immaterial. The government isn't taking over an abandoned well. They are taking over a going well.

Mr. Weymann: It goes to the value of the leasehold estate because of the abandonment. We want to bring out that there are abandonment costs involved which have to be reckoned in figuring the valuation of the property.

The Court: Will you read the last two or three questions, please, Miss Reporter?

(Record read.)

The Court: The objection is overruled.

Mr. Dechter: I would like to make the further objection, your Honor, that it calls for a conclusion from the witness and is not the best evidence if it pertains to legal instructions.

The Court: I think that objection is good.

Mr. Weymann: May I be heard before the court rules?

The Court: Yes, you may.

Mr. Weymann: I believe this witness is qualified as an experienced oil operator, and it calls for the regulations of an administrative body.

The Court: I think the objection is good. Sustained.

Mr. Weymann: May we have an exception?

The Court: Yes.

Q. By Mr. Weymann: You testified, Mr. Block, as to the value per cent of the overriding royalties

(Testimony of Sam Block.)

and fixed that at \$600.00. You also stated that in valuations of oil royalties, overriding royalties varied, that some are higher than that and some are lower. Is that correct? A. Yes.

Q. What in your opinion makes that variation?

A. Well, it depends on the production of the well.

Q. It depends on the production. As to the amount of oil?

A. Yes, the price regarded by the production of the well and also there is no expense attached to royalties, you see. [100]

Q. You had at the time the government took it over, I think you testified, two 1,000-barrel tanks?

A. Yes, sir.

Q. And you used those to store the oil which you produced? A. Yes, sir.

Q. Those were necessary for the continued operation of the well, were they? A. Sure.

Q. And you also had a derrick? A. Yes.

Q. 122-foot? A. 122-foot derrick.

Q. In arriving at your valuation of \$22,400.00, I believe, what valuation did you place on those tanks?

A. Well, they overlooked to put them in the inventory altogether, you see.

The Court: I didn't hear the answer. Read it, please.

(The answer was read.)

Mr. Weymann: I move to strike the answer.

The Court: It may go out. Read the question.

(Testimony of Sam Block.)

(The question was read.)

The Court: Do you understand the question?

The Witness: I do.

The Court: Answer it. [101]

The Witness: \$1500.00 for both of them.

Q. By Mr. Weymann: \$1500.00 for each?

A. No; both of them. \$750.00 apiece.

Q. By Mr. Weymann: What valuation did you place on the derrick? A. \$4,000.00.

Q. Derrick, \$4,000.00? A. Yes.

Q. Do you know how much casing there was in the hole?

A. I would have to look at the inventory because I don't remember offhand.

Q. Well, what information as to that did you have before you when you arrived at this valuation?

A. The Union Oil Company made their own inventory and gave it to me.

Q. Did you take that estimate from the Union Oil Company's inventory? A. Yes, sir.

Q. Then what valuation did you place on the casing as shown by the Union Oil Company inventory?

A. Well, it is such a long inventory I can't recall each item separately, Mr. Weymann. I would have to look at it.

Mr. Dechter: I have no objection to counsel using their own exhibit, which is the inventory.

The Witness: O. P. A. prices, that I can tell you, Mr. [102] Weymann.

(Testimony of Sam Block.)

Q. By Mr. Weymann: I show you a copy of the Union Oil Company's inventory, and will you examine that and see if that will refresh your recollection.

Mr. Dechter: Is that the same as set forth in the exhibit?

Mr. Weymann: That is the mimeographed copy.

The Witness: What is the question?

Q. By Mr. Weymann: What valuation did you place on the casing?

A. Well, Mr. Weymann, we went through the O. P. A. prices on it; whatever at that time they allowed us to sell it for.

The Court: Can you tell that amount?

The Witness: I can't remember offhand.

The Court: All right.

Mr. Weymann: What is the answer?

(The answer was read.)

Q. By Mr. Weymann: What value did you place on the tubing?

A. 35 cents, it seems to me.

Q. 35 cents per foot?

A. Yes. That is seamless tubing.

Q. Now, those valuations which you have testified to, \$750.00 each for the tanks and \$4,000.00 for the derrick, and 35 cents per foot for the tubing, as of what date were those [103] values fixed by you?

A. I put them on on the day they mailed me the inventory, the Union Oil Company.

Q. And what date was that?

(Testimony of Sam Block.)

A. I don't recall the exact date, Mr. Weymann.

Q. Well, could you give us the date, approximately? A. It must have been in 1942.

Q. In 1942? A. Yes.

Mr. Weymann: I don't know, Mr. Dechter, but I don't believe that inventory was available at that time.

Mr. Dechter: Well, your own exhibit says, "Taken over by Defense Plant Corporation September 29, 1942."

Mr. Weymann: I don't want to mislead the witness.

The Witness: That must have been in '43, then. I don't remember exactly.

Q. By Mr. Weymann: Then you have no present recollection, have you?

A. No, I haven't, Mr. Weymann.

Mr. Weymann: I see. That is all, Mr. Block.

Redirect Examination

By Mr. Dechter:

Q. Mr. Block, what has been the normal operating cost for operating this well per month?

A. A couple of hundred dollars a month. [104]

Q. Did you have an arrangement with some oil operator to operate this well for so much a month?

A. Yes, sir.

Q. And how much was that contract cost that you had?

Mr. Weymann: Just a moment. That is objected to as irrelevant and immaterial. The cost of

(Testimony of Sam Block.)

the operation to this defendant may be entirely different from that of another party.

Mr. Dechter: I will withdraw the question.

Q. Mr. Block, are you familiar with what is the usual charge that is made in the Playa del Rey field for operating wells, looking after the operation of a well per month? A. Yes, sir.

Q. Do you know different operators who have looked after wells of others and made charges for that? A. Yes, sir.

Q. And do you know what the average charge is for that service? A. Yes, sir.

Q. And in your opinion on or about September of 1942, what was the fair and reasonable charge for the normal and ordinary operation of a pumping well like your well, Block Well No. 10?

A. \$50.00 a month.

Q. Would that charge include such extraordinary expenses [105] as pulling the well, or repairs, or things of that kind? A. No, sir.

Q. That is just for the normal and usual operation of the well? A. Right.

Q. And in addition to that you would have taxes and insurance? A. Yes, sir.

Q. And you would also have replacements from time to time? A. Yes, sir.

Q. Do you know whether the price of oil has been subject to regulation by the Office of Price Administration just like other commodities?

A. Yes, sir.

(Testimony of Sam Block.)

Q. And that applies to crude oil prices like crude oil produced from the Block Well No 10?

A. Yes, sir.

Q. In your opinion if there wasn't such restriction on the crude oil price would the market price of the crude oil as produced by Block Well No. 10 be higher or less than 94 cents a barrel?

Mr. Weymann: Just a moment, please.

A. It would be higher.

Mr. Weymann: Just a moment. That is objected to as being [106] purely conjectural and speculative and no proper foundation laid for it.

The Court: It has already been answered, Mr. Weymann.

Mr. Weymann: I move to strike the answer, then.

The Court: It may go out.

Mr. Weymann: May the jury be instructed to disregard the answer?

The Court: The jury is so instructed

Q. By Mr. Dechter: Mr. Block, do you have an opinion as to whether the price of crude oil would be higher or lower in the absence of O.P.A. regulations?

A. It would be higher.

Mr. Weymann: May the answer go out, your Honor?

The Court: Let it go out. The jury is instructed to disregard it.

Q. By Mr. Dechter: The question is do you have an opinion as to whether it would be higher or lower? Answer it yes or no.

A. I have.

(Testimony of Sam Block.)

Q. Answer yes if you have an opinion and if not, say no

The Court: He said I have.

The Witness: I have.

Q. By Mr. Dechter: Have you arrived at that opinion by discussions with other oil operators?

A. I did. [107]

Q. Have you arrived at that opinion by articles that have appeared in different oil and financial periodicals?

A. Yes, sir.

Q. Are you familiar with the hearings that have been conducted before the Congress of the United States?

A. Yes, sir.

Q. In connection with the price of crude oil?

A. Yes, sir.

Q. And in giving your opinion as to whether the price would be higher or lower you are basing it upon your own experience, your contacts in the oil business, and what you have read?

A. Yes, sir

Q. Now, I will ask you what is your opinion as to whether the crude oil price would be higher or lower than that fixed by the Office of Price Administration?

A. It would be higher.

Q. Are you familiar with whether the production of your well has increased or decreased since the Defense Plant Corporation took it over?

Mr. Weymann: I object to it as entirely immaterial. What happened to the well since the government took it over is entirely immaterial in that respect, because all sorts of conditions may

(Testimony of Sam Block.)

have intervened there which may have increased or decreased the production. [108]

Mr. Dechter: May I be heard?

Mr. Weymann: It is conceded this property was taken over for a natural gas storage reservoir, which would in the nature of things have a decided effect. The well may have been shut down, or other wells may have been shut down, so what happened after the government took it over would have no bearing whatever on the value.

Mr. Dechter: May it please the court, I think it has a material bearing for this reason: not only we, but the government are going to have witnesses on the stand to estimate the productive life of this well, and as to what the well would produce. Now, they are going to try to put themselves in the position as to the date when the government took the well over, but in arriving at that estimate they are merely projecting their own opinion as to what the production will be in the future; and here we have a situation where the government has operated the well for over two years, since it has taken it over, and it has a materiality in showing whether a projected estimated of the productive life of the well is in line or otherwise, and I think for that purpose it is material. I agree with counsel that the jury has to determine the fair market value in so far as the leasehold interest is concerned as of the date that the government took it over, but we have a situation here which isn't like potatoes or flour which

(Testimony of Sam Block.)

sells every day, or something that sells on an exchange—— [109]

The Court: I think you stated your position very definitely. I think before the court properly can rule on that question, though, and the objection, that you should lay some further foundation. Ask him as to his knowledge of whether it has been continued to be produced

Mr. Dechter: Very well, your Honor.

Q. By Mr. Dechter: Mr. Block, are you familiar, from your own knowledge, as to whether this well has continued to be produced after the date that the government took it over from you?

Mr. Weymann: We object to that on the ground that it is immaterial.

The Court: The objection is overruled.

Mr. Weymann: May we have an exception?

Q. By Mr. Dechter: Do you understand the question? A. I want to get it again.

The Court: Do you know whether or not the government has continued to produce oil from the Block Well No. 10 since the government took it over?

The Witness: Yes, sir.

The Court: You know that?

The Witness: Yes, sir.

Q By Mr. Dechter: You have been on the property and seen the well?

A. I pass by there every morning. [110]

Q. What is that?

The Court: For how long a period?

(Testimony of Sam Block.)

The Witness: For the last three years, since they took it over.

Q. By Mr. Dechter: And do you know of your own knowledge as to whether the production of the well has increased or decreased since the government took it over?

Mr. Weymann: Same objection.

A. Increased.

The Court: Read the question, please, Mr. Reporter.

(The question was read.) [111]

Mr. Weymann: I move to strike the answer for the purpose of an objection.

Mr. Dechter: No objection

The Court: Well, you make your objection and the court will consider it, Mr. Weymann:

Mr. Weymann: The objection is predicated on this ground, your Honor, that the condition of the operations of that entire field have entirely changed by reason of the injection program, that necessarily by reason of the injection there has been a gas drive. On other wells, it hasn't been shown whether other wells have been shut down, whether certain wells have been permitted to produce and whether certain wells have been shut down, all of which would have a definite and decided bearing on the production of any particular well.

The Court: I think it would be proper to bring that out on cross-examination. I think this answer may stand.

Mr. Weymann: May we have an exception then?

(Testimony of Sam Block.)

The Court: Yes, you may.

Q. By Mr. Dechter: Mr. Block, do you know of your own knowledge to what amount the barrels per day production of the well has been increased since the well was taken over by the government?

A. I do.

Mr. Weymann: May we have a general objection to this line of questioning? [112]

The Court: The same objection?

Mr. Weymann: Yes

The Court: It is overruled.

Mr. Weymann: Exception.

Q. By Mr. Dechter: And to what amount of barrels per day has the well increased, Mr. Block?

A. It is making now 55 to 60 barrels per day.

Q. Mr. Block, based upon your experience in the oil well equipment business, are you able to state whether the demand for second-hand or used oil well equipment in the years 1942 and 1943 was greater or less than the supply available of such equipment? A. I am.

Q. And what was that condition?

A. We couldn't supply enough for the buyers that we had for all kinds of pipe, casing, and equipment of all kinds.

Q And are you able to explain to the court and jury why the supply of used or second-hand equipment was insufficient to meet the demand during that time?

The Court: Well, is that important, Mr. Dechter, as to why it was?

(Testimony of Sam Block.)

Mr. Dechter: Well, it just gives the background, your Honor.

The Court: Well, is that necessary? We don't want to take up time unnecessarily. He stated the demand was greater [113] than the supply.

Mr. Dechter: I will withdraw the question.

Q. I will ask you if it isn't a fact that during the years 1942 and 1943 major oil companies who previously very seldom purchased used equipment were in the market for large amounts of used or second-hand oil equipment? A. Yes, sir.

Mr. Weymann: That is objected to as calling for a conclusion.

The Court: The objection is sustained. The answer may go out.

Q. By Mr. Dechter: Well, are you familiar of your own knowledge as to whether major oil companies were buying used or second-hand equipment in large quantities? A. I am

Q. Have you bought tubing and rods and casing from wells that have been operated for long periods of time? A. I have.

Q. And has that equipment that you bought from wells that have been operating from eight to ten years been in good workmanlike condition?

A. Yes, sir.

Q. Now is it or is it not a fact that it is common practice in the oil industry for oil well equipment like derricks, tubing, rods and casing to be moved from one well to [114] another?

A. Yes, sir.

Mr. Dechter: That is all.

(Testimony of Sam Block.)

Recross Examination

By Mr. Weymann:

Q. Mr. Block, you testified that production of Block's Well No. 10 increased from 55 to 60 barrels a day after the government took it over?

A. From 25 it was 55 and 60.

Q. On what do you base that conclusion?

A. It is a secret that I don't want to give out.

The Court: Will you read the question and answer?

(Question and answer read.)

The Court: You answer the question. You volunteered the information and it was brought out by your attorney on redirect examination, so just answer the question.

A. I got some figures from the Triangle Oil Company where they sell the oil.

Q. By Mr. Weymann: Is that the sole basis of your information? A. Yes, sir.

Mr. Weymann: I move to strike the defendant's testimony as being entirely hearsay.

The Court: It may go out. [115]

Mr. Weymann: May the jury be instructed to disregard it?

The Court: The jury is instructed to disregard all the evidence which the court orders to go out or to be stricken.

Mr. Dechter: I might state, your Honor, that I have subpoenaed the records of the Union Oil

(Testimony of Sam Block.)

Company for that production, and they will be here exactly as to the amount of value.

The Court: That is a matter that may be presented at the proper time, Mr. Dechter.

Q. By Mr. Weymann: The \$50.00 a month operating charge, that is a charge for a pumper to take care of the well? A. Yes, sir.

Q. So that I may not misunderstand you, Mr. Block, that does not include the cost of power?

A. No.

Q. Which is an additional charge.

The Court: Does it include any oil that is necessary to use?

The Witness: Nothing. It is just for looking after the well.

The Court: The services of a pumper in looking after the well?

The Witness: That is right, your Honor.

Mr. Weymann: That is all.

Mr. Dechter: That is all.

The Court: You are excused, Mr. Block. [116]

Mr. Dechter: I will call Mr. Rubin.

ABRAHAM RUBIN,

called as a witness by and in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Abraham Rubin.

(Testimony of Abraham Rubin.)

Direct Examination

By Mr. Dechter:

Q. Mr. Rubin, what is your business?

A. I am in the oil well supply business and oil business.

Q. How long have you so been engaged?

A. In the oil well supply business for 15 years, and the oil business about a year and a half.

Q. Where are you employed?

A. In Southern California and in Central California.

Q. And during that time you have become familiar with the prices asked and received for oil well equipment, machinery and supplies?

A. Yes, sir.

Q. And do you know what that type of personal property has sold for? [117]

A. Yes, sir.

Q. And you have heretofore been shown this inventory of personal property which is a part of Exhibit C of the amended complaint contained on pages 1, 2, 3 and 4 of Block's Oil Company Well No. 10?

A. Yes, I have seen a similar list.

Q. And you have been asked to look it over for the purpose of giving an opinion as to the fair market value of that personal property?

A. Yes, sir.

Q. And have you formed such an opinion?

A. Yes, I have.

Q. And what in your opinion was the fair and reasonable market value of that personal property?

(Testimony of Abraham Rubin.)

Mr. Weymann: Just a moment, please.

Mr. Dechter: As of——

Mr. Weymann: Pardon me. I am going to have an objection before the question is asked.

Mr. Dechter: As of October of 1943.

Mr. Weymann: I object to the question as incompetent for two reasons. In the first place the date of the valuation is not of October, 1943; on the second ground that the property taken is to be valued as a whole, as a unit, and that it is improper to introduce evidence of separate elements which go to make the valuation of the entire property taken. [118]

The Court: You make no objection then, Mr. Weymann, that the date of January 12, the filing of the amended complaint, is not used in any way?

Mr. Weymann: No. I make no objection to that. I make objection, of course, to the date of October, 1943.

The Court: Yes. Your position is that it should be September 28, 1942?

Mr. Weymann: Yes, of the valuation of that property as a whole without separate valuation of any of the elements that go into it.

The Court: The objection is overruled.

Mr. Weymann: May I have an exception, please?

The Court: Yes.

The Witness: Do you want the answer in dollars and cents?

Mr. Dechter: Yes.

(Testimony of Abraham Rubin.)

The Witness: I don't remember the exact total, but I went over those figures at that time and it seemed to me it was over \$22,000. I can't give you the exact figure.

Q. By Mr. Dechter: It was about \$22,000?

A. Yes, over \$22,000 was the total as near as I can recall.

Q. At that time was there an O.P.A. ceiling on most oil well equipment, machinery and personal property?

A. The O.P.A. ceiling price came in October 2, 1943, I [119] think it was.

Q. The question is, was there an O.P.A. ceiling price on oil well supplies, machinery and equipment in October of 1943? A. Yes, there was.

Q. And was that O.P.A. price on both new and used equipment?

A. On used equipment. New equipment was priced, naturally. The ceiling price was on used equipment.

Q. Do you know what the difference was in the ceiling price on used equipment and the new prices on the same type of equipment? A. Yes, I do.

Q. What was that difference?

A. Roughly about 15 per cent.

Q. In October of 1943 was the demand for used oil equipment greater than the supply?

A. Yes, sir.

Mr. Weymann: May we have an exception to all questions along this line?

The Court: Now, Mr. Weymann, I think to

(Testimony of Abraham Rubin.)

make an objection now such as that would not quite reach the question which is now before the court or before the witness for his answer. I have no objection if it is agreeable to Mr. Dechter that it be understood that your general objection is to go to [120] all of these questions.

Mr. Weymann: That is the purpose of the objection.

Mr. Dechter: I will so stipulate, your Honor.

The Court: Yes. The general objection you made that you referred to heretofore?

Mr. Weymann: That is correct. I simply don't want to be objecting to every particular question.

The Court: I think that is very proper, but I want to be sure it refers only to the general objection.

Mr. Weymann: To the general objection, that is correct.

The Court: The objection is overruled.

Mr. Weymann: Exception, please.

Mr. Dechter: Will you read the last question and answer, Miss Reporter?

(Record read.)

Q. By Mr. Dechter: Are you familiar with the Block Well No. 10 in the Playa del Rey field?

A. Yes, sir.

Q. You have seen that well in operation?

A. Yes, sir.

Q. And you have had experience in buying oil wells?

A. Yes, sir.

Q. And in selling oil wells?

A. Yes, sir.

(Testimony of Abraham Rubin.)

Q. And as of September 28, 1942, do you have an [121] opinion as to what the fair market value of the oil and gas leasehold owned by Mr. Block embracing this producing oil well and subject to a landowner's and overriding royalty of 30 per cent, assuming that said well was producing or capable of producing at or about that time approximately between 20 and 25 barrels of oil per day?

A. I have.

Mr. Weyman: That is objected to as incompetent, and no proper foundation laid. The witness has not been qualified.

The Court: I think that objection is good as to his qualifications.

Q. By Mr. Dechter: Over what period of time have you bought and sold wells, Mr. Rubin?

A. Producing wells for the last year and a half.

Q. Prior to that time had you been familiar with what oil wells sold for and what people were asking and receiving for them?

A. Yes, sir.

Q. And in arriving at an opinion as to the fair market value of this Block's well, have you taken into consideration what your knowledge has been of the oil business as to what people have asked for and received for oil wells?

A. Yes, sir.

Q. And in giving your opinion you are basing it on what you learned from your experience in the oil business? [122]

A. Yes, sir.

Q. You have also operated oil wells yourself?

A. Yes, sir.

(Testimony of Abraham Rubin.)

Q. And also for others? A. Yes, sir.

Q. Now, do you have an opinion as to the fair market value of the oil and gas leasehold owned by Mr. Block?

Mr. Weymann: I renew my objection.

Mr. Dechter: Pardon me, may I finish?

Mr. Weymann: I am sorry.

Mr. Dechter: Subject to a landowner's and overriding royalty of 30 per cent and capable of producing between 20 and 25 barrels of oil per day. All right, Mr. Weymann.

Mr. Weymann: I renew the objection on the same ground. The witness is still not qualified to express an opinion of the value of the Block oil well.

The Court: He is merely asking him if he has an opinion. He may answer that yes or no.

The Witness: Yes, I have.

Q. By Mr. Dechter: And what is your opinion as to the fair market value of such leasehold and well as of September, 1942?

Mr. Weymann: I renew the objection, if the court please, on the same ground. The witness is unqualified to testify to the fair market value of Block's oil well. [123]

The Court: I think the objection should be sustained.

Mr. Dechter: Unless the court cares to hear from me, I believe the witness has testified he has had experience in buying and selling wells. It might go to the weight of his testimony, not to the admissibility. I think I have qualified him sufficiently.

(Testimony of Abraham Rubin.)

The Court: Well, he has only been in the business for a year and a half, and this other statement about his talking with other people, in the opinion of the court the foundation is inadequate. The objection is sustained.

Mr. Dechter: Very well. You may take the witness.

Mr. Weymann: No cross-examination.

Mr. Dechter: You may step down. I will call Mr. Crown.

WALTER J. CROWN,

called as a witness by and in behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Walter J. Crown.

Direct Examination

By Mr. Dechter:

Q. Mr. Crown, what is your business?

A. I am a consulting petroleum engineer. [124]

Q. How long have you so been engaged?

A. One year.

Q. And prior to that time, what was your business or occupation?

A. I was petroleum engineer with the State of California Division of Oil and Gas for 16 years.

(Testimony of Walter J. Crown.)

Q. You were connected with the Division of Oil and Gas for 16 years? A. Yes.

Q. As a petroleum engineer?

A. Yes, as a petroleum engineer.

Q. Prior to that time, what was your occupation or profession?

A. I worked for two years for Standard Oil Company in the general oil fields work, plus engineering.

Q. And prior to that time, what was your occupation?

A. I mined for a year in southern Nevada.

Q. And prior to that time, what was your profession and occupation?

A. I worked for Empire Gas & Fuel in geology in Kansas.

Q. Empire Gas & Fuel Company is one of the major oil companies on the mid-continent?

A. Yes, that is correct.

Q. How long were you with them?

A. That was just a short time, roughly about six [125] months after I got out of school.

The Court: Out of where?

The Witness: The university.

The Court: Where did you go to college?

The Witness: Ohio State University.

The Court: Were you graduated from there?

The Witness: That is correct, yes.

The Court: What year?

The Witness: 1923.

The Court: You majored in what?

(Testimony of Walter J. Crown.)

The Witness: Geology.

The Court: Go ahead, Mr. Dechter.

Q. By Mr. Dechter: In your work with the Division of Oil and Gas, did you practice petroleum engineering and geology? A. I did.

Q. Are you familiar with the Block Well No. 10 in the Playa del Rey? A. Yes.

Q. And have you been asked to make an appraisal on that well so as to give an opinion in this court? A. Yes, sir.

Q. And did you make such an appraisal?

A. I did.

Q. Are you able to give this court an opinion as to the [126] fair market value of the leasehold embracing Parcels 87 and 103, on one of which parcels is located a producing oil well known as Block Well No. 10, subject to a landowner's and overriding royalty of 30 per cent—

The Court: Don't you think you should state the gravity of the oil and the amount of production?

Mr. Dechter: —and producing approximately 20 to 25 barrels of oil per day of 19 gravity oil?

The Witness: Was that question did I prepare a report of that kind?

Q. By Mr. Dechter: No. Do you have an opinion as to the fair market value? A. I do.

Q. What is your opinion as to the fair market value of that leasehold and well as of September of 1942?

(Testimony of Walter J. Crown.)

A. I placed the value of the future production from that well at——

The Court: Oh, no, Mr. Crown. You are answering something besides the question that was asked you [127]

Q. By Mr. Dechter: You just give us your opinion as to the value. We will go into the reasons afterwards. You testified you have an opinion as to what the fair market value was. Now, give us what that opinion is without giving us your reasons at this time.

A. Approximately \$11,000.00.

Q. Does that include the personal property and the fixtures located on the leasehold?

A. It does not.

Q. That is just for the oil and gas leasehold and the oil under the leasehold?

A. That is correct.

Q. In arriving at that particular value, have you taken into consideration any value for the suitability or availability of this property as a gas reservoir? A. I did not.

Q. Do you have an opinion as to whether this property on or about September, 1942, was available for use as a gas reservoir?

A. I am not sure that I understand that question.

Mr. Dechter: Will you read that question?

(The question was read.)

The Witness: Yes.

(Testimony of Walter J. Crown.)

Mr. Weymann: Pardon me a moment. Is the answer to that question—— [128]

The Court: That he has an opinion.

Q. By Mr. Dechter: And do you have an opinion as to whether on September, 1942, there was a demand or need for a gas storage reservoir such as the Playa del Rey field?

Mr. Weymann: That is objected to as incompetent, irrelevant and immaterial.

The Court: It appears to the court that the objection is good, Mr. Dechter.

Mr. Dechter: Your Honor, apparently most of these witnesses have merely given an opinion as to value of the property based solely on its use as an oil well. Now, the government has taken over this field not for the use as an oil well, but for use as a gas reservoir or gas storage project. Now, it is my contention that there was a great need in Southern California for such a project, considering the peculiar situation that we have here every winter of there being a shortage of gas when the cold weather is in existence, and I think under the rules announced by the cases that there should be taken into consideration all available uses that the property may be put to, not just the use that it is being put to. In other words, an owner may only use property for pasture purposes, but it may be valuable for a much higher use. That is my purpose.

The Court: Well, do you want to bring this out as to its highest and best use? [129]

Mr. Dechter: Yes, that is my purpose.

Mr. Weymann: May I be heard on that, if the court pleases?

I think it is fundamental that the use to which the condemnor puts this property or can put the property is no criterion whatsoever as to the value of the property at the time it was taken. Moreover, the property which this defendant owned and which is taken is a leasehold estate for the purpose of producing oil and gas; the only use to which it could have been put by the defendant under his right, under his lease, is that use to which it was put. So, any evidence or any speculation as to what use the condemnor or any one else may put the property to is entirely without the realm of conjecture or opinion as to what use the property may be put to.

Mr. Dechter: I agree with Mr. Weymann that the use to which the condemnor should put the property should not enter into the valuation; in other words, any increment or increase in the value of the property by reason of what the condemnor does after it acquires it would not be pertinent. But if the condemnor takes over a piece of property which is available for certain use, and thereafter puts it to that use, it certainly is competent under the cases to bring out what that use is, just like those cases, that long line of reservoir cases in California, where property in San Diego and up in the San Joaquin Valley was just being used for grazing land, but they [130] happened to be so situated that they could also be used for a reservoir,

and the court permitted, in those cases, a value to be put on of what the highest use would be which in that case was a reservoir.

The Court: Do you have any of those cases at hand?

Mr. Dechter: Yes, your Honor. They are among my instructions, and I will give them to you. The cases cited under Instruction No. 7, No. 8. The leading cases on that point are *San Diego v. Neale*, which is noted under Instruction No. 7, 88 Cal. 50, *Spring Valley Water Works v. Drinkhouse*, 92 Cal. 528.

The Court: Well, they are all under those two instructions, are they?

Mr. Dechter: Yes. And then there are some other cases. *City of Stockton v.*—

The Court: Are they under the same instruction?

Mr. Dechter: Instruction No. 9.

The Court: What have you to say about that, Mr. Weymann?

Mr. Weymann: I believe a preliminary question would probably settle the whole proposition. Whether or not this property could be used as an oil reservoir alone or in conjunction with other property.

The case of *United States v. Olsen*, I haven't the citation here with me, is decisive on that point, that no additional valuation can be placed upon the property for use as a reservoir [131] or a dam site merely because of the possibility of its aggregation with other property.

The Court: What is that citation?

Mr. Weymann: United States v. Olsen. I will send for that.

The Court: What is the citation?

Mr. Weymann: United States v. Olsen.

The Court: Don't you know the volume number?

Mr. Weymann: I haven't it, but I will send for it.

Mr. Dechter: I can give you that citation. 292 U. S. 246 at 255. It is found in my Instruction No. 14b. And that case is construed in a later case which is cited in Instruction 14b, the case of United States v. Powelson, which is cited there, and it construes the Olsen case.

The Court: The court would like to have you discuss this matter in the absence of the jury, and I think it will take some time, so the court will excuse the jury now until tomorrow morning at 10:00 o'clock.

The members of the jury are now excused from attendance upon the court. You will return tomorrow morning at 10:00 o'clock.

Bear in mind the admonitions of the court heretofore given you. That is, that you are not to converse among yourselves or suffer yourselves to be addressed by any person on any subject connected with the trial, and you are not to form [132] or express any opinion thereon until the cause is finally submitted to you. You are now excused. Return tomorrow at 10:00 o'clock. Court will recess for a few minutes.

(A recess was taken.)

(The following proceedings were had in the absence of the jury:)

The Court: Mr. Dechter, if you will make a concise statement of your position and refer to your authorities.

Mr. Dechter: Yes. My position, your Honor, is that we are entitled to show the different uses to which the property may be put, and particularly the highest and best use; and while market value might not be based upon any particular use, it does permit evidence to be introduced as to the various uses and what the highest and best use is, and for the expert to take that into consideration in giving his market valuation.

In this recent case of *United States v. Powelson*, 87 Law. Ed. 1390, quoting the court at 1397 and 1398 verbatim, that is Instruction 14b. That instruction is taken word for word out of that particular case. The court says: "An owner of land——"

The Court: Wait just a moment.

Mr. Dechter: The court says:

"An owner of lands sought to be condemned is entitled to their 'market value, fairly determined.' [133] * * * That value may reflect not only the use to which the property is presently devoted but also that use to which it may be readily converted." Citing different cases. "In that connection the value may be determined in light of the special or higher use of the land when combined with other parcels; it need not be measured merely by the use to which the land is or can be put as a separate

tract. * * * But in order for that special adaptability to be considered, there must be a reasonable probability of the lands in question being combined with other tracts for that purpose in the reasonably near future. * * * In absence of such a showing, the chance of their being united for that special use is regarded 'as too remote and speculative to have any legitimate effect upon the valuation.' "

In this particular case there was a divided court, a five to four decision, and the majority court held that the particular use that the defendant was trying to show the property would be adapted to was too remote, because the only way it could be done would be by condemnation. The dissenting judges held that in itself was not a drawback or deterrent, and the court should have permitted the instruction to be given. I think the evidence was received and the instruction was given to the jury.

The first part of the language I read is almost exactly the same language that is used by our California cases. For example, in *San Diego v. Neale*, 78 Cal. 59, defendant's Instruction 11: "You are instructed that in fixing market value——"

The Court: Let me find that now. Your Instruction 11?

Mr. Dechter: Yes.

The Court: Go ahead.

Mr. Dechter (reading): "You are instructed that in fixing the market value of the property of the defendant taken by the United States, you should consider the highest and best use to which the property is suitable, having regard not only to the

existing business or wants of the community but also those that may reasonably be expected in the immediate future.”

Now, there has been an existing want in this community for a gas storage project almost for the last 10 years, ever since Los Angeles has grown to the size that it has, and there has always been a curtailment of gas to industrial uses in order to supply domestic uses.

In Instruction No. 9 we cite the case of the City of Stockton v. Ellingwood, 96 Cal. App. 708. That is a very exhaustive case, and the court in that case goes into all the previous cases and also cases outside the State. The court [135] there says:

“Market value is the price in terms of money which the property will bring if offered for sale in the open market with a reasonable time to find a purchaser buying with full knowledge of all the uses and purposes, including the highest and best purpose to which it is adapted or for which it is capable of being used; and in ascertaining the market value of the properties taken in this proceeding for public use, you should consider all of the purposes, including the highest and best purpose for which the land is adapted and the price for cash it would bring on the 28th day of September, 1942 for any such purposes, allowing a reasonable time to find a purchaser.” In Instruction No. 10, line 4:

“The inquiry in such cases must be: what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time

applied, but with reference to the uses to which it is reasonably adapted—that is to say, what is it worth from its availability for valuable uses?”

I might state, your Honor, that only recently the Pacific Lighting Corporation by private arrangement, not by condemnation, acquired the right to the Golita oil field for the purpose of using that as a gas storage reservoir for the [136] purpose of supplying the communities around Santa Barbara and Ventura. And I understand the Standard Oil Company has been using the Rio Vista field in the San Joaquin Valley for the same purpose.

Under Instruction No. 7, the cases cited there are the cases that are cited most often in California on condemnation cases. It is said:

“What is the property worth in the open market, viewed not merely with reference to the use to which it is at the time applied, but with reference to the uses for which it is adapted; that is to say, what is it worth from its adaptability for all uses, having regard to the existing wants of the community and such wants as may be expected in the immediate future, and in this connection you may take into consideration all of the uses for which the property is adaptable, including its particular fitness for particular purposes, when such evidence of such purposes forms a factor in determining the market value.”

In addition to gas being used in these fields for the purpose of storing gas in recent years there has been adopted a system of gas drive or repressuring of oil fields where gas is brought in for the

purpose of replacing the propulsive force that was there originally when the gas was not seriously diminished in forcing the oil to the surface, and in this [137] particular case it is our contention that this gas reservoir serves a double purpose: It serves a purpose of storing the gas and getting it out when you need it in the winter, and at the same time it serves the purpose of getting out more gas and getting out more oil because the greater the gas force you have the more oil you are able to extract. There is something else that I understand. Not every field can be adapted as a gas storage reservoir, and in this particular area Playa del Rey is probably the only one, or one of the few fields that can be used for that particular purpose.

Mr. Weymann: If the court please, I agree thoroughly with Mr. Dechter's statement that gas drive through the injection of the gas tends to increase the production of oil and gas for these wells.

The Court: You are speaking of repressuring now?

Mr. Weymann: Yes, repressuring. This is one of those peculiar situations where the instruction with regard to the highest and best use is not applicable, in our opinion, for several reasons.

I am entirely in accord with Mr. Dechter's statement of the law generally, but I contend that it isn't applicable to this case.

The Court: Let me see if I get your position clearly. It is that the general rule is that the

property may be valued as to its highest and best use, is that correct? [138]

Mr. Weymann: That is correct.

The Court: But that does not apply to this situation because of some peculiar circumstance?

Mr. Weymann: That is correct.

The Court: Very well. Now, will you explain why?

Mr. Weymann: There are two circumstances. In the first place, the condemnee here is not in the position of the owner of the land who may put the land to any use. That is, one owning the land in fee simple may put it to any lawful use.

We have to bear in mind that Mr. Block's property here was a limited and special use; that the only right he had in that land was to use it for the production of oil and gas.

To take an analogy, suppose Bullock's store building at the corner of Broadway and Seventh was condemned, and assuming that Bullock's had a 99-year lease on that property for store purposes and was entitled to part of the condemnation for the taking of its lease. Now, assuredly, Bullock's would not be entitled to have considered as the valuation of its lease a possible use for hotel purposes or for some use not permitted by the terms of its lease, because that is excluded from the nature and quality and limitation of the estate which Bullock's owns.

Now, Mr. Block is entirely in the same situation. He has no right under the terms of his lease to use it for a gas storage reservoir or for any purpose other than the production of gas and oil. I cited

to the court the case of *Olson v. United States*, which seems to me to be controlling in this instance.

The Court: Mr. Welch, will you get me 292 U. S., please?

Mr. Weymann: There, a number of parcels of land was sought to be condemned, and one of the defendants claimed compensation for the use of the property for reservoir purposes, and it there appeared that the property could be used for that purpose only in connection with other land. The court cites *Nichols on Eminent Domain* and says:

“The fact that the most profitable use of a parcel can be made only in combination with other lands does not necessarily exclude that use from consideration if the possibility of combination is reasonably sufficient to affect market value. Nor does the fact that it may be or is being acquired by eminent domain negative consideration of availability for use in the public service.” Citing cases. Then, further down on page 256:

“But the value to be ascertained does not include, and the owner is not entitled to compensation for any element resulting subsequently to or because of [140] the taking. Considerations that may not reasonably be held to affect market value are excluded. Value to the taker of a piece of land combined with other parcels for public use is not the measure of or a guide to the compensation to which the owner is entitled.”

Then, the court concludes on page 257, about two-thirds of the way down:

“Elements affecting value that depend upon event

or combinations of occurrences which, while within the realm of possibility, are not fairly shown to be reasonably probable, should be excluded from consideration, for that would be to allow mere speculation and conjecture to become a guide for the ascertainment of value—a thing to be condemned in business transactions as well as in judicial ascertainment of truth.”

Now, we have here a situation where the government has taken Mr. Block's property to use as a gas storage reservoir in combination with other property. I think the court may take judicial notice of the fact that unless the subject property is by nature of the structure underlying the property constituting a separate reservoir, that where there is a free passage and interflow of the fluid and the gas beneath the surface, this couldn't possibly be used as a gas storage [141] reservoir except in combination with other property. So, the very physical condition of the property precludes its use apart from other property taken in condemnation.

The Court: That does not appear yet, Mr. Weymann.

Mr. Weymann: It does not appear, if the court please, that is possible.

The Court: Well, I know, but you are making the affirmative statement that it appears that it couldn't be used.

Mr. Weymann: Well, I suggest——

The Court: So far as the court is concerned, it doesn't know whether or not this well is a separate

well and is shut off by some fault or by some arrangement of nature so that it is entirely impervious to outside pressure and that it would be protected from the inside pressure. I don't know. There is nothing in the evidence to indicate it yet.

Mr. Weymann: Well, in that event it would seem that a proper foundation to show that should be laid before any evidence of possibility of its use and the value of such use should be permitted to go into evidence.

The Court: Well, now, it may be necessary for a further foundation, but also this matter can't all be proved at one time, and the parties have to present their evidence just as it should be presented, not necessarily present the whole background at one time, but a piece at a time, piecemeal, you might say. [142]

Mr. Weymann: And then, of course, there is the objection that I referred to in the first instance.

The Court: Yes, the first instance. That is as to the nature of this particular interest, the leasehold interest.

Mr. Weymann: Yes, the leasehold interest.

The Court: Well, let's hear what Mr. Dechter has to say about that.

Mr. Dechter: On that point I asked Mr. McLay if I could borrow Mr. Weymann's copy of the main lease, and with Mr. Weymann's permission I would like to read the following into the record from it. Is that agreeable?

Mr. Weymann: Is that the main lease?

Mr. Dechter: That is your copy.

Mr. Weymann: Yes. There is no question about it.

Mr. Dechter: I will read it into the record:

“That the Lessor, for and in consideration of Ten Dollars (\$10.00), in hand paid, the receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of the Lessee to be paid, kept and performed, has granted, demised, leased and let, and by these presents does grant, demise, lease and let unto the said Lessee exclusively, for the purpose of exploring, mining and operating for oil, gas and casing-head gas, and other hydrocarbon substances, and taking, storing, removing and disposing of same, and manufacturing gasoline and other products [143] therefrom, with the right for such purposes to the free use of oil, gas or water from said land, but not from Lessor’s water wells or ponds, and granting the right to build tanks, power houses, stations, houses for employees and such other structures (excepting refinery) as may be necessary or convenient in its operations, together with rights-of-way, easements and servitudes for pipe lines, power lines, telephone and telegraph lines, with the right of removing whether during or after the term hereof, any and all improvements, placed or erected on the premises by Lessee, including the right to pull all casing, on all that certain tract of land situated in the County of Los Angeles, State of California, described as follows.”

Then follows the description which includes these parcels.

Now, the court will observe particularly this language:

“Taking, storing, removing and disposing of same,”

which refers immediately in the previous clause to oil, gas and casinghead gas, and other hydrocarbon substances. Now, that is exactly what is being done right now by the Union Oil Company. In other words, they come along during the summer months and they inject this gas in certain non-producing wells. They produce a certain number of wells including the [144] Block well in the regular manner. In the winter months when they need the gas what they do is put the return flow on the wells in which they injected the gas, and they take out the gas that they put in. In other words, they get back the gas that they put in, and they get back the oil that they would have produced and more, and get back additional gasoline, and this is exactly within the purposes of this particular lease.

In other words, if this lessee and the other lessees got together, they could have made a contract with the Southern California Gas Company, for instance, taking all the gas needed to operate the gas for the Southern California Gas Company and return that gas and have the benefit of the increased flow of oil and increased gasoline from that operation.

Now, I agree with your Honor on the second point, that it doesn't go to the admissibility. It goes to the weight of the evidence. If after the evidence is in the court should feel that there was

no likelihood of any need for a gas storage project, that the wants of the community didn't contemplate anything like that in the near future, and this was something extraordinary that came only from governmental use which would never have arisen otherwise, if the court should feel from the evidence that it was that improbable the court would have the right to instruct the jury to disregard the evidence and make an instruction not to take that into consideration. But I don't believe it goes to the admissibility, under the case that I gave your Honor, which construes the Olsen case, in 14b.

In read the qualifying language. In other words, if the court should find that the use is such that it cannot be presently devoted to or readily converted to, then the court may disregard it. But the court specifically points out the mere fact that one parcel by itself may not be availed of for its higher use and can only be so availed of by a combination doesn't detract from a consideration of that use, unless it is shown there is no reasonable probability that the lands in question could be combined with other tracts for that particular purpose.

I believe under this particular lease the gas storage [146] project and repressuring proposition would certainly be within the contemplation of the parties and for both the benefit of the lessor and lessee.

Mr. Weymann: That seems to be an ordinary oil and gas lease, if the court please. I don't think the fact that it provides for storage of the gas produced and stored by any stretch of the imagination

contemplates using that property for a gas storage reservoir. I don't believe it can be so construed, because the language is that of an ordinary oil and gas lease.

I think Mr. Dechter revealed the fatal defect in his whole position when he said that possibly the owners of these various properties might have gotten together to convert this into a gas storage reservoir. That is a possibility, but it is so remote and so conjectural that under the Olsen case it would seem to me the court has specifically passed on the inadmissibility until it is shown. The burden is not upon the plaintiff to show it is impossible or improbable. But in view of the physical elements involved there it would seem to me any such use is clearly inadmissible, and the lease by no means, as I interpret it, involves the use of this property for gas storage purposes. It involves the use of it for the purpose of producing oil and gas. Necessarily, it must be stored until it is sold; but it doesn't mean using the underground sands to inject gas and to store them, except inject it [147] for the purpose of a gas drive.

The Court: Well, if it is injected for any purpose and it is stored, wouldn't it meet that requirement of storage, or wouldn't it come within the definition of storage?

Mr. Weymann: I don't think it contemplates storing below the surface in the gas sands; I believe that storage applies to storage of the gas in the tanks awaiting its disposition. They need not dispose of it immediately but may store it in the tanks.

That, I believe, is the interpretation of that language. But the operation of a gas storage reservoir is something quite different.

The Court: Mr. Weymann, the government is taking this for a reservoir and it is storing gas there until it is needed.

Mr. Weymann: That is correct.

The Court: If a well is repressured, then there is a restoration of the gas in the well; that is correct, is it not?

Mr. Weymann: That is correct. [148]

The Court: If you store it, repressuring may result, I take it?

Mr. Weymann: If you store it in the oil bearing sand.

The Court: That is right, and that is what is being done now?

The Court: So whether it was intended for repressuring or not, it results in repressuring. I am asking you these questions and making these statements with as much knowledge as I have or can get from the statements of the attorneys, but if I am wrong I want you to enlighten the court.

Mr. Weymann: I appreciate that.

The Court: If it is placed there for storage, it may result in repressuring. If it is put in there for repressuring, it may be the same as storage?

Mr. Weymann: I don't quite follow the court in that last statement because it is put in there for two entirely different purposes.

The Court: But I mean it acts as a storehouse for the gas just the same?

Mr. Weymann: Well, if it is put in for repressuring, it is constituting a gas drive and circulates out. It can't be.

The Court: But it doesn't have any repressuring effect until the cavity is filled? [149]

Mr. Weymann: Until the pressure is brought up.

The Court: So that is the storage of gas, it seems to the court.

Mr. Weymann: That is right.

The Court: I am just trying to figure this out as much as I can in order to arrive at a proper conclusion.

Mr. Weymann: But may I point out the essential difference between storage for storage basin and storage for repressuring? If the property is used as a gas storage reservoir it may become necessary to shut down the wells and not produce them at all in order that the stored gas may be conserved and kept there.

The Court: Well, now, that is the thought that occurred to the court. Mr. Dechter has stated that they are operating wells and using it for storage at the same time.

Mr. Weymann: They are operating some of the wells, but they have shut down——

The Court: I am talking about this particular well.

Mr. Weymann: Well, that may be. I don't know, but that all depends on the mechanics of the operation.

The Court: Well, now, I just want to try and get this information, and there is no jury here. Now,

ordinarily when a lease is entered into for a production of oil and gas, it is for the purpose of producing it as long as it is available at a profit. That is, it can be produced at a profit, and the [150] purpose between the lessor and the lessee is to get the gas and oil out of the ground and the lessee is to pay a royalty to the lessor?

Mr. Weymann: That is correct.

The Court: Then, if there is nothing done here except using the well for storage, it seems to the court there would be no pecuniary advantage to the lessor.

Mr. Weymann: There would not be.

The Court: That is, he would get nothing out of it.

Mr. Weymann: That is right.

The Court: He is getting nothing out of it. That is the thought that occurred to me because Mr. Dechter stated that the Union Oil Company was doing this very thing now, that it was used for the purpose of storing gas and at the same time it was producing oil.

Mr. Weymann: The production of gas is an incident. It is incidental production.

The Court: So, it might be then, if that is the case, that the lessee having the right of storage could perform its lease by producing and at the same time have a reservoir there for storage.

Mr. Weymann: I don't see how that can be.

The Court: Well, I don't know. Mr. Dechter said that is what they are doing.

Mr. Weymann: Well, of course that is not the

fact as I [151] understand it. The property is being used for the injection of gas. It is stored there for a period of months. Certainly there is a residue of oil in the structure that may be produced from one well or another. One well may be shut down and another opened up. It all depends on the pressure in the hole, so that in other words the oil produced is a by-product.

The Court: Well, now Mr. Weymann, are you familiar with the status of that oil well now and what it has been since September of 1942?

Mr. Weymann: Oh, yes, I have the records.

The Court: Do you say that Mr. Dechter is incorrect in his statement that they are using it for storage and they are producing at the same time?

Mr. Weymann: He is correct in the statement that they are producing it, but I can't answer the question that they are using it for storage because they are using the entire field for storage.

The Court: Well, are they using this well in connection with other wells for storage purposes?

Mr. Weymann: Oh, yes, for storage purposes, but I don't see how we can segregate that well because the structure is contiguous.

The Court: The thought occurred to the court that if this were to be used for storage purposes and they would have [152] to shut down the well, it would not be the purpose of the oil and gas lease to do that, because the parties are dependent upon production. That is, the lessor, the owner of the property, wants to get something out of it. That is the reason he entered into the lease. That was the

thought that occurred to the court, but if it can be used for storage purposes of gas and at the same time the production may go ahead unrestricted, then there is another situation.

Mr. Weymann: Well, the production may not go ahead unrestricted because certain of the most productive wells have been shut down.

The Court: Well, there may be another element, but so far as the evidence goes, if anything there is an increase in production.

Mr. Weymann: That is correct. This particular well has not been shut down for technological reasons that I am not in a position to state to the court.

The Court: Very well. Your position is now that even if the Powelson case is followed that the party offering the proof must lay the foundation?

Mr. Weymann: That is correct.

The Court: It may be reasonably combined with other properties for the purpose suggested. That is your position?

Mr. Weymann: That is correct.

The Court: Unless Mr. Dechter can show the court something [153] to the contrary, I would say your position is correct on that.

Mr. Weymann: The Powelson case follows the Olson case, as I understand it.

The Court: Yes, I understand. I will ask Mr. Dechter now what he has to say. [154]

Mr. Dechter: My position is in accordance with the Powelson case.

The Court: I am talking about the burden of showing——

Mr. Dechter: The burden is upon——

The Court: The responsibility rests upon you to show it reasonably may be done.

Mr. Dechter: That is correct. I would like to make this comment, your Honor: Here some years ago, before they even knew about the system of repressuring fields as a whole, certain gas companies like the Signal Oil & Gas Company used to render a service where they would furnish you with so much gas which they would force into the hole, and then that would increase the production of the well, and the gas company would get back that gas in addition to the operator getting more oil. Now, I understand from geologists and engineers that under the normal method of production there is always at least one-third of the oil that is never captured because of the loss of this propulsive force, and when you re-pressure——

The Court: That is the object of repressuring.

Mr. Dechter: That is right.

The Court: Of course, there is quite a little to be said on that point. You take the Rio Vista fields, for example, where a storage of gas was effected, that is, that was the purpose, and there was no question but what a surplus of gas was attempted to be stored there; but there is always a [155] question of whether or not it is recovered. That is, it may be recovered in part but not entirely. So, those are matters which I don't think we have to go into, but I think on any basis if your testimony is offered you will first have to show the foundation that you have said you would show.

Mr. Dechter: That is right, the burden is on us, I admit that.

The Court: The court will not attempt to rule until tomorrow morning and give time for further consideration of it.

The Court is now adjourned until tomorrow morning at 10:00 o'clock.

(Whereupon, at 4:20 o'clock p.m., Wednesday, July 25, 1945, an adjournment was taken until Thursday, July 26, 1945, at 10:00 o'clock a.m.) [156]

Los Angeles, California

Thursday, July 26, 1945, 10:00 a.m.

Mr. Dechter: May it please the court, I have a short witness who would like to leave town about noon, and Mr. Weymann says he has no objection to my putting him on out of order.

The Court: It is satisfactory to the court. First, do you stipulate all the jurors are present and in their places in the jury box?

Mr. Dechter: Yes, sir.

The Court: Do you, Mr. Weymann?

Mr. Weymann: So stipulated, your Honor, yes.

The Court: You may call your witness.

J. D. RUSH,

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: J. D. Rush.

The Clerk: R-u-s-h?

The Witness: Yes.

Direct Examination

By Mr. Dechter:

Q. Mr. Rush, what is your business?

A. I am in the oil well supply business.

Q. You are doing business under the name of J. D. Rush [158] Company? A. Yes, sir.

Q. And how long have you so been engaged in that business? A. 12 years.

Q. And what is the nature of that business?

A. It is buying and selling of oil well supplies.

Q. Prior to your going into business for yourself were you connected with the General Petroleum Corporation? A. Yes, sir.

Q. For how long? A. About 15 years.

Q. And while you were connected with General Petroleum Corporation were your duties that of buying and selling second-hand and used oil well equipment? A. Yes, sir.

Q. You have heretofore been shown an inventory of personal property located on what is known as Block Oil Company Well No. 10, being pages 1 to 4, inclusive, of Plaintiff's Exhibit C of Plaintiff's Amended Complaint? A. Yes, sir.

(Testimony of J. D. Rush.)

Q. And you have been asked to look that over for the purpose of expressing an opinion as to the fair market value thereof? A. Yes, I have.

Q. And do you have an opinion as to the fair market [159] value of that property as of October, 1943? A. Yes.

Q. And will you please state to the court and jury what that opinion is?

Mr. Weymann: Just a moment, please. I object to the testimony on the ground that it is incompetent, irrelevant and immaterial. On the further ground that a separate valuation may not be given for any of the elements comprising the property which is taken; that under the cases I would like to cite to your Honor, particularly the case of *Morton Butler Timber Company v. United States*, 91 Fed. (2d), that is in the Sixth Circuit, a separate valuation of the component parts of the property taken is not an element of the fair market value. And on the further ground that the date of valuation is the date on which this property was taken over by the United States, to-wit, September 28, 1942.

The Court: I didn't hear the last part.

(The record was read.)

The Court: Well, the objection is overruled, and, Mr. Weymann, with regard to the matter of separate valuation, as far as the date is concerned, that is the only basis in the opinion of the court for the separate valuation: that is, one should be considered as of the 28th of September, 1942, that is, the real property, and this remaining part, the personal

(Testimony of J. D. Rush.)

property and equipment, that that should be considered as of [160] either October, 1943, or of January 12, 1944. Mr. Dechter has asked the question as of October, 1943, and you have made no objection as to any differentiation between October, 1943, and January, 1944, so the court believes that the only reasonable way that this jury may be able to arrive at the total valuation is to take the separate valuation of those parcels, one as of September 28, 1942, and the other as of October, 1943. Of course, in the final valuation, that is, the fixing of it by the jury, there must be a total amount; but for the matter of compiling that or arriving at it, it would have to be taken separately, and this only because of the different dates.

I make that in explanation of the ruling of the court.

Mr. Weymann: Thank you, sir. May we have an exception?

The Court: Yes. Mr. Dechter, in order that the court may be clear, your position is the same as stated by the court?

Mr. Dechter: That is correct, your Honor.

Q. By Mr. Dechter: Do you want the question read, Mr. Rush, or do you have it in mind?

A. I have it in mind. [161]

Q. By Mr. Dechter: Will you please give us what your opinion is of the value of this personal property, machinery and fixtures as of October, 1943?

A. Approximately \$18,000.

(Testimony of J. D. Rush.)

Q. On or about October of 1943, based upon your knowledge and experience in the oil well equipment business, are you able to say whether the demand for used or secondhand oil well equipment was greater than the available supply?

The Court: Just a moment. Will you read the question, please?

(Question read.)

Mr. Weymann: That question is objected to as too indefinite. There is no statement as to what oil well equipment or where the equipment is located.

The Court: I think that objection is good, Mr. Weymann.

Q. By Mr. Dechter: Mr. Rush, where had you been carrying on your business of buying and selling oil well machinery and equipment and personal property?

A. Well, I buy and sell throughout California.

Q. And you maintain your principal office where?

A. 5199 District Boulevard in Vernon.

Q. That is in the central manufacturing district?

A. Yes.

Q. And in your business you deal with all the major oil well companies? [162]

A. Yes, sir.

Q. And you also deal with the independent oil companies?

A. Yes, sir.

Q. And you are familiar with what the demand is for oil well machinery and equipment?

A. Yes.

(Testimony of J. D. Rush.)

Q. And you are also familiar with what the supply is? A. Yes.

Q. Based upon that knowledge and experience, are you able to state whether in October of 1943 or thereabouts the demand in Southern California for oil well equipment and machinery was greater or less than the available supply?

A. The demand was greater than the supply.

Mr. Dechter: You may take the witness.

Cross Examination

By Mr. Weymann:

Q. Mr. Rush, did you personally inspect the equipment? A. I have, yes.

Q. When?

A. Well, I would say approximately two and one-half or three years ago.

Q. That would place it in 1942?

A. 1942 or the early part of 1943. [163]

Q. Was that before or after the property was taken over by the Defense Plant Corporation?

A. That was before.

Q. Before. Do you know whether or not the same equipment was in there in the well at the time on which you fix your valuation?

A. Well, using the inventory as a criterion, why, it was the same equipment.

Q. Did you inspect the pipe at the time of October, 1943?

A. Well, I had records of the pipe that was in the well. I couldn't inspect it, of course.

(Testimony of J. D. Rush.)

Q. But you didn't inspect it?

A. No. It is quite impossible.

Q. How much of the property mentioned in the inventory which you have valued at \$18,000 was recoverable?

A. Well, I wouldn't—

Mr. Dechter: May it please the court, we would object to that on the ground that it is immaterial and not proper cross examination. This condemnation is taking over an oil well which is the same as a going business. We are not considering here something that has been dismantled or that you can only get upon dismantling. They weren't interested in taking over so many feet of pipe out of the hole. They were interested in getting so many feet in a hole to use for the [164] purpose of operating as an oil well. It is just the same as if they took over a going business.

I think it is immaterial how much could be salvaged. It is just like somebody taking over an apartment house furnished and then asking what it would be worth when the apartment house was ready to fall down. It is what it is worth when they take it over.

Mr. Weymann: That brings us back to our contention. This witness testified there was a demand for secondhand material in the market, and predicated on that assumed demand in his opinion he has placed an estimate of \$18,000. Now, naturally in order to fill that demand, to obtain that price, the property and material must be severed, must be sold.

We are not dealing here now with the valuation

(Testimony of J. D. Rush.)

of this well. We are not dealing with the valuation of this property in connection with this well. We are dealing with it as a separate item, and it has nothing to do with the operation of the well so far as this witness is concerned.

Mr. Dechter: I respectfully disagree with Mr. Weymann. My opinion is that you have to take what the replacement value would be at the time the government took it over, what the government was authorized to take over, and there is what in my opinion is what the value is. It isn't what it would be if it were taken out as junk, but what the value is if you had to put it in place to use for the purpose of operating as an [165] oil well. That is my theory.

The Court: The objection is overruled.

Mr. Weymann: Would you read the question, please?

(Question read.)

The Witness: That would be quite indefinite as to the amount that could be recovered.

Q. By Mr. Weymann: Was your estimate then of the value of the entire amount?

A. The estimate is the value of the material in place.

Q. Of the material in place, and how much of that could be recovered and sold you have no idea?

A. Well, it is very indefinite. It would depend on the rulings of the Mining Bureau as to the quantity of pipe they would allow you to pull from the well.

(Testimony of J. D. Rush.)

Q. Well, the rulings of the Mining Bureau might prohibit the removal of any of it or all of it, isn't that so? A. No, not likely.

Q. Well, take the casing. There are approximately 6300 or 6400 feet of casing in the well. Do you know how much of that casing is cemented in?

A. Well, all you could do would be to estimate the amount, but ordinarily in a well of that depth, why, the cement would run up to a depth of 4000 or 3500 feet.

Q. And in your experience would you say that that cannot be recovered? [166]

A. Below the cement, it cannot be recovered.

Q. It cannot be recovered, and how much of that would be below the cement in this well?

A. Well, if the string was 6200 feet—is that the——

Mr. Detcher: The inventory shows 6275 feet of 7-inch casing.

The Witness: Well, estimating from my experience I would say that probably 3500 to 4000 feet of the pipe would not be cemented in.

Q. By Mr. Weymann: Well, is that just a guess, Mr. Rush?

A. Oh, yes. [167]

Redirect Examination

By Mr. Dechter:

Q. I ask if it isn't a fact that in so far as all of the personal property described on the inventory which you have been shown, that ordinarily when a

(Testimony of J. D. Rush.)

well has ceased to produce and is ready to be abandoned, you can remove all of that with the exception of the casing? A. That's right.

Q. And in so far as the casing is concerned, the Mining Bureau will require you to leave in the hole so much of the casing as is necessary to avoid what are known as surface waters from being contaminated so as to not damage the soil from an agricultural standpoint?

Mr. Weymann: Just a moment. I object to the form of the question. Mr. Dechter is not a mining engineer, I believe, and he cannot state the conditions under which it is to be taken out.

Mr. Dechter: You mean Mr. Rush?

Mr. Weymann: As to Mr. Dechter. I think Mr. Dechter has assumed facts not in evidence.

Mr. Dechter: I will qualify the witness a little further.

Mr. Weymann: I am not objecting to the qualification of the witness; I am objecting to the form of the question.

The Court: Read the question, please, Mr. Reporter.

(The question was read.) [168]

The Court: The objection is sustained. It calls for a conclusion of the witness as to what the Mining Bureau would do.

Mr. Dechter: May I proceed further with the witness, your Honor?

The Court: Yes.

Q. By Mr. Dechter: Mr. Rush, have you had

(Testimony of J. D. Rush.)

experience personally in abandoning oil wells and salvaging casing from oil wells? A. I have.

Q. And over what period of years have you had that experience?

A. During the past 13 years.

Q. About how many wells would you say that you have bought and abandoned for the purpose of salvaging equipment and casing from wells?

A. Perhaps 130 or 150.

Q. Wells? A. Yes.

Q. And while you were employed by the General Petroleum Corporation you did similar work?

A. Well, I didn't have any direct connection with it other than to handle the materials after they were salvaged.

Q. But since you have been in business for yourself you have bought wells for abandoning and you have had them [169] abandoned in accordance with the rules and regulations of the Mining Bureau?

A. Yes, sir.

Q. And you have taken casing from all those wells, have you not? A. Practically, yes.

Q. And ordinarily a well will have, first, what is known as a string of surface casing, is that right?

A. Yes, sir.

Q. And then it will have a second string of casing which is known as—what is the second string of casing known as?

A. That is the water string.

Q. Now, usually to about what depth does the surface casing go?

(Testimony of J. D. Rush.)

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A. That is the water string.

Q. Now, usually to about what depth does the surface casing go?

(Testimony of J. D. Rush.)

A. Well, there is a general rule which applies in all [172] cases. You find exceptions, of course.

Q. Mr. Rush, upon your knowledge of this equipment, if you were buying this equipment on this well and abandoning the well, how much would you pay for that equipment?

Mr. Dechter: To which we object upon the ground it is incompetent, irrelevant and immaterial. This isn't a case where the jury is to determine the market value of personal property after it is taken out of a well and to be considered separate from its use in connection with the well. The value is what it would cost to replace these items as of the date the government was authorized to take it over. That is the value; not what the junk value would be or what the value would be for salvage purposes.

The Court: I think the objection should be sustained; but, Mr. Dechter, you have asked the court to consider this equipment as property which is not attached to the realty.

Mr. Dechter: That's right, your Honor.

The Court: And, therefore, it is personal property.

Mr. Dechter: That's right. But my theory is exactly the same as an apartment house or a department store which has a leasehold for 10 years; the leasehold is being condemned, and there is also being taken over the fixtures and equipment, and the leasehold has one valuation and the fixtures and equipment another valuation. But the government is taking this over as a going concern, and in this

(Testimony of J. D. Rush.)

case of United States v. Powelson— [173] I took the trouble to read it last night—the government specifically points out where a going concern is taken over that the going concern valuation should be used.

The Court: And Mr. Weymann has argued that this should be taken over as a going concern and as a unit. Now, the court only varied from that general rule because as a matter of necessity there had to be two valuations, and that was because the court accepted your position that this property was not affixed to the realty.

Now, Mr. Rush, as I understand your testimony, all of this property which you have valued, this equipment which has been enumerated in the list that was supplied you, all of that could be removed from the well and the well site, and in the ordinary course of business would be done upon the abandonment of the well, except a certain part of the casing. Now, the part that could not be removed was the surface casing of eight or nine hundred feet; that is correct, is it?

The Witness: Yes.

The Court: And then about eight or nine hundred feet of the other portion of the casing could be removed, is that correct?

The Witness: Of the 7-inch, yes.

The Court: What?

The Witness: Of the 7-inch, yes.

The Court: And then the rest of it would have to be left [174] in the hole?

(Testimony of J. D. Rush.)

The Witness: Yes, sir.

The Court: And it ordinarily is done in that field?

The Witness: That's right.

The Court: Upon the abandonment of a well?

The Witness: Yes, sir.

The Court: I think the court will take a recess of a few minutes. The jury may retire to the jury room and they will bear in mind the admonitions of the court. Return when called by the bailiff.

(A recess was taken.) [175]

The Court: The jurors are all in their places, is it so stipulated?

Mr. Weymann: So stipulated.

Mr. Dechter: So stipulated.

The Court: Proceed.

Q. By Mr. Dechter: Mr. Rush, in arriving at the value of \$18,000 for personal property described in the inventory on pages 1 to 4 of Exhibit C of the amended complaint, did you assume a value for all of the casing in the hole?

A. Yes, sir, with the exception of the 11 $\frac{3}{4}$ surface pipe.

Q. And you gave no value to that because that was not included in the inventory?

A. In the inventory.

Q. Now, the inventory shows 306 feet of 5 $\frac{3}{4}$ inch liner. Did you testify as to whether that could or could not be removed at the time the well was abandoned?

A. I testified it could not be removed.

(Testimony of J. D. Rush.)

Q. And what was the fair market value of that particular liner as of October, 1943?

A. \$1.08 per foot would be about \$326.00, I believe.

Q. And you testified how much of the 7-inch casing could not be removed? A. Yes, sir.

Q. Will you tell us again approximately how much of the [176] 7-inch casing you could not remove at the time of the well being abandoned because of the Division of Oil and Gas regulations?

A. About 5300 feet.

Q. And what was the fair market value of the 7-inch casing in October of 1943?

A. \$1.21 per foot.

Q. Now, do you have an opinion as to the fair market value of the 5¾ inch liner in September of 1942? A. Yes.

The Court: The liner is already testified to.

Mr. Dechter: I am now using September of 1942.

The Court: Oh, September of 1942.

Q. (By Mr. Dechter): What in your opinion was the fair market value of the 5¾ inch liner to place in that well in September of 1942?

A. Well, it had the same value.

Q. \$1.08 per foot? A. \$1.08.

Q. And what in your opinion was the fair market value of the 5300 feet of 7-inch casing to install in that well about September of 1942?

A. The same price, \$1.21.

Mr. Dechter: You may take the witness.

The Court: Well, I think, Mr. Dechter, you

(Testimony of J. D. Rush.)

could ask the [177] witness and should ask him what he considered the valuation of the equipment less the casing which could not be removed.

Mr. Dechter: Yes, your Honor. [178]

Q. (By Mr. Dechter): Mr. Rush, what, in your opinion, would be the fair market value of the personal property described on pages 1 to 4 of the inventory, Exhibit C of the amended complaint, eliminating therefrom the 5300 feet of 7-inch casing that you say could not be removed in the event the well was abandoned, and eliminating the 306 feet of 5¾-inch liner in October of 1943?

A. Could I have a piece of paper, please?

(A sheet of paper was handed to the witness.)

A. \$12,260.00.

The Court: Have you finished?

Mr. Dechter: Yes, your Honor.

The Court: Mr. Rush, was there any substantial difference in the value of the equipment which you have said was valued at \$12,260.00 in October of 1943, was there any difference between that value and what the value was of the same equipment September 28, 1942?

The Witness: No, there wasn't any substantial difference.

The Court: That is all.

Recross Examination

By Mr. Weymann:

Q. Mr. Rush, are you familiar with the terms of the master lease on this property?

(Testimony of J. D. Rush.)

A. No, I don't believe I am.

Q. Are you familiar with the terms of the sub-lease under [179] which Mr. Block holds this property? A. No.

Q. Are you familiar with the provisions for abandonment of the lease?

A. No, I don't believe so.

Q. Have you any opinion as to the abandonment cost?

A. Well, I could express an opinion.

Q. And still live up to the requirements of the lease?

Mr. Dechter: To which we will object upon the ground that the witness has testified he is not familiar with the terms of the lease, and therefore certainly couldn't give an opinion on that point.

Mr. Weymann: I will withdraw the question.

Mr. Dechter: Upon the further ground it is immaterial.

The Court: Well, he is withdrawing the question.

Q. By Mr. Weymann: The casing, the liner, and all of the items that you have eliminated now from your estimate of \$12,260.00, do those constitute all of the items that could not be recovered? Is there anything else besides the matters to which you have testified which would have to be left in the well?

A. No, there is nothing else that would have to be left in the well; that is, that is shown on the inventory.

(Testimony of J. D. Rush.)

Q. Are you familiar with the O.P.A. price regulations as of that date? [180] A. Yes.

Q. Is this estimate to which you have testified in accordance with the price ceiling? A. Yes.

Q. What is that price regulation, Mr. Rush?

A. I don't know whether I quite understand the question or not. You mean in a general way?

Q. There are two price ceilings, are there not?

A. No. There is only one that I know of.

Q. For equipment that is on the field, sold on the field, and equipment which is reconditioned?

A. Oh, yes, yes.

Q. Well, will you tell us what those are, please?

A. Well, the price of equipment which is sold on an as is basis, the ceiling price cannot exceed 55 per cent of the present selling price.

The Court: That is, of new——

The Witness: Of new material of like description.

There is another regulation to the effect that you can sell that equipment at 85 per cent of the new selling price of the same equipment, provided that that machinery or whatnot is moved to a machine shop and completely overhauled and repaired, the seller to give the same guarantee on the machinery that a new dealer would give. There is no regulation of that kind on pipe. [181]

Q. Now, may I ask you in arriving at your estimate of \$12,260, was that predicated on an as is valuation or on a reconditioned valuation?

A. Well, that was predicated on an as is valua-

(Testimony of J. D. Rush.)

tion with the exception incidentally of the casing. That was based on strictly O.P.A. ceiling price.

Q. And with the removal of that equipment, the well could not operate unless the equipment was replaced? A. That is true.

Q. I believe, Mr. Rush, that you testified before that your valuation of \$12,260 was replacement cost new? A. No.

Q. Then you testified it was the valuation——

Mr. Dechter: I will object to that on the ground that it is assuming something not in evidence. I have no recollection of such testimony.

The Court: I have no recollection, but I would not trust my memory. If it is important, you may refer to the record.

Mr. Weymann: That is all, Mr. Rush.

Mr. Dechter: You are excused.

The Witness: Thank you, sir. [182]

WALTER J. CROWN,

called as a witness by and in behalf of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Dechter:

Q. Mr. Crown, in addition to expressing an opinion as to the value of the leasehold itself, were you asked to give an opinion as to the fair market

(Testimony of Walter J. Crown.)

value of the 10 7-12ths per cent gross overriding or sublessor's royalty owned by Mr. Block on Block's Well No. 10? A. Yes, sir.

The Court: Mr. Dechter, before you begin on that, I would like to call this to your attention, in line with the last part of the examination of Mr. Rush. Mr. Crown gave his estimate of the value of the leasehold as \$11,000. Now, I think it would be well to ask if he had in mind the presence of casing there which was a part of the real property, that is, being affixed so that it comes within the definition of a fixture.

Mr. Dechter: Very well. I will withdraw my former question.

Q. Mr. Crown, yesterday in giving your opinion as to the fair market value of the leasehold of Mr. Block subject to a [183] landowner's and sublessor's royalty aggregating 30 per cent, in arriving at that valuation, did you take into consideration the value of the casing in the well which was affixed in the well and which could not be removed under the regulations of the Division of Oil and Gas when the well is abandoned? A. I did not.

Q. Would your valuation be higher if you included the value of that casing in the well?

A. The unremovable casing?

Mr. Dechter: Miss Reporter, will you read the question?

(Question read.)

The Witness: Well, if there were any salvagable casing in the well, then the value would be higher.

(Testimony of Walter J. Crown.)

Q. By Mr. Dechter: Well, I am talking, Mr. Crown, as of September 1942?

A. It would be higher.

Q. In other words, in arriving at the valuation of that leasehold as you gave it to us yesterday, you only took into consideration the oil that would be recovered, the net oil that would be recovered. Is that correct?

A. Oil and gas.

Q. Yes. And, do you have any experience or knowledge to be able to express an opinion as to what the additional value of the leasehold would be by reason of having available in the well casing, 7-inch casing, 6275 feet and 5¾ liner [184] of 306 feet?

A. I have.

Q. What would be the additional increase in valuation by reason of that?

A. It would be approximately the value of the casing that Mr. Rush valued. I would have to go to some one like Mr. Rush to obtain a price on the salvagable casing.

Q. I see. Now, Mr. Crown, were you asked to give an opinion as to the fair market value of the 10 7-12ths per cent overriding royalty in Block Well No. 10?

A. Yes, sir.

Q. And did you arrive at such an opinion?

A. I did.

Q. What is your opinion as of September of 1942?

A. \$3120.00.

Q. What was that again?

A. \$3120.00.

Q. In connection with your work with the Division of Oil and Gas, did you become familiar with

(Testimony of Walter J. Crown.)

the different oil fields in structure in Southern California? A. I did.

Q. And are you able to state whether there are any other fields within Southern California besides the Playa del Rey oil field that would be available for use as an underground gas reservoir? [185]

Mr. Weymann: That is objected to as being incompetent, irrelevant, immaterial, and having no bearing on the valuation of the property taken in this proceeding.

The Court: I understand it to be just a preliminary question. The question is overruled.

Mr. Dechter: Do you want the question read?

The Witness: Please.

Mr. Dechter: Will you read the question, please?

(Question read.)

The Witness: I don't know of any with the favorable conditions as the Playa del Rey field.

Q. By Mr. Dechter: Are you able to state——

Mr. Weymann: I move to strike the answer as not responsive.

The Court: It may go out.

Mr. Dechter: Will you read the question again, please, Miss Reporter? Try to answer it, Mr. Crown, if you can.

The Court: Answer it yes or no, and then you may explain your answer if it needs some explanation.

(The question was reread.)

The Witness: Yes.

(Testimony of Walter J. Crown.)

Q. By Mr. Dechter: Will you please state to the court and jury if there are any other fields available for use as a gas reservoir in Southern California besides the Playa del Rey field?

A. There is another one.

Q. And what other field or fields are there available for such purpose besides the Playa del Rey field?

A. I would say the El Segundo oil field.

Q. Any other that you know of?

A. Those have the characteristics and conditions which would fit a gas storage project.

Mr. Weymann: I move to strike the answer as not responsive.

The Court: Well, I don't know whether he had finished it or not. Had you finished your answer, Mr. Crown? [187]

The Witness: No. I had a little more to go.

The Court: Just go ahead.

The Witness: The Playa del Rey and El Segundo fields are very similar geologically, and the conditions in those two fields are ideal, you might say, for a gas storage project; whereas other fields in the basin would not be so well suited.

Q. By Mr. Dechter: Are you able to state to the court and jury what those peculiar conditions are that exist in those two fields that make them suitable as a gas reservoir?

A. Well, the oil zone there is a single zone and more or less uniform in character; whereas in other fields we have alternating sands and shales lying

(Testimony of Walter J. Crown.)

in lenses, and so forth, and the gas cannot migrate as readily in those fields as it can in a single zone field like Playa del Rey or El Segundo.

The Court: When you use the word "zone", in the ordinary sense you mean a stratum, is that correct?

The Witness: Well, it may be a single stratum or it may be strata.

The Court: It may be several strata, is that correct?

The Witness: Yes.

The Court: I wasn't sure it was understood by the jury when you used the word "zone". As I understand it, oil men use the word "zone" in connection with that business as meaning either a stratum of oil or several strata of oil from which production is had, is that correct?

The Witness: That is correct. In most California fields there is more than one stratum in an oil zone.

The Court: In a zone?

The Witness: That is correct.

The Court: But a zone is separate and distinct from another zone which might consist of several strata, is that correct?

The Court: That is usually optional as to how the zones are split up or segregated.

The Court: Go ahead, Mr. Dechter.

Q. By Mr. Dechter: Are there any other fields in California that have been used for the storage of gas, underground storage of gas?

(Testimony of Walter J. Crown.)

Mr. Weymann: That is objected to as entirely incompetent and irrelevant and outside of the issues in this case. Other gas storage fields are not on trial here.

The Court: I think the objection should be sustained, and it is.

Mr. Dechter: May I note an exception, and may I approach the bench and make an offer, your Honor, on that point.

The Court: Yes, you may.

(The following proceedings were had out of the hearing of the jury:)

Mr. Dechter: I offer to show by this witness that there [189] are other fields in California, such as Golita in Santa Barbara County, and the Rio Vista field in Northern California, which have been used as gas reservoirs for underground storage?

The Court: What is the purpose of that?

Mr. Dechter: The purpose is to show, under the United States v. Powelson case, that it isn't a conjectural use that this field might have been put to.

The Court: I didn't consider that phase of it.

What have you to say about that, Mr. Weymann?

Mr. Weymann: Unless there is, first, a foundation laid that this field can be unified, and unless this particular property can be used, why, I think it is objectionable, because we are not trying the gas storage fields, we are only trying this property.

The Court: I know, but this is just a part of the foundational proof, and in considering it in that light, I think the court will change its ruling and

(Testimony of Walter J. Crown.)

permit it to be shown as to the others, simply as part of the foundation.

Mr. Dechter: I might state, your Honor, in this Powelson case the evidence was received.

The Court: I think it should go in for the purpose stated.

(The proceedings were resumed within the hearing of the jury as follows:)

The Court: The Court will withdraw its ruling. I think [190] it will be better to let you ask your question again, Mr. Dechter.

Q. By Mr. Dechter: Mr. Crown, do you know of any other oil and gas fields in California that have been used for the underground storage of gas? A. I do.

Mr. Weymann: I renew my objection for the purpose of the record.

The Court: Yes. The objection is overruled.

Mr. Weymann: And exception.

Q. By Mr. Dechter: Will you please state to the court and jury what those other fields are that have been used for underground gas storage?

A. The Golita gas field, and I believe the Rio Vista gas field.

Q. Where is the Golita field situated?

A. In Santa Barbara County.

Q. And by whom is that field operated as an underground gas storage reservoir?

A. I believe it is Pacific Lighting Corporation.

Q. Pacific Lighting Corporation is one of the

(Testimony of Walter J. Crown.)

public utility companies that furnishes gas in California? A. I believe so.

Q. What other fields do you know of that have been used for underground gas storage? [191]

The Court: He stated Rio Vista.

Q. By Mr. Dechter: Yes. By whom is the Rio Vista field operated?

A. There are a number of operators up there. I do not know which company or utility company does the storing up there.

Q. How long did you say you have been in California? A. 20 years.

Q. Are you familiar with whether a general condition has prevailed in Southern California during the winter months as to whether there is an adequate supply of gas for domestic and industrial use?

A. As for any particular time, is that?

Q. During the winter months.

A. I would have to qualify the answer.

The Court: Have you answered it yet?

The Witness: No, I haven't.

The Court: Read the question, Mr. Reporter.

(The question referred to was read as follows: "Are you familiar with whether a general condition has prevailed in Southern California during the winter months as to whether there is an adequate supply of gas for domestic and industrial use?")

The Court: If you can answer it yes or no, so answer it, and then explain your answer if it is necessary. [192]

(Testimony of Walter J. Crown.)

The Witness: Yes is the answer.

The Court: Any explanation?

The Witness: The reason for that answer is that gas has been brought down from Northern or Central California in the coast regions to supply the needs in the Los Angeles basin or metropolitan area.

Mr. Weymann: I move to strike that answer as not responsive.

The Court: That part may go out.

Q. By Mr. Dechter: Do you know Mr. Crown, whether for the last 10 years it has been necessary for the gas companies to restrict their available supply of gas to domestic users and to curtail industrial users by reason of the shortage of gas available during the cold weather?

Mr. Weymann: To which I object on the ground that this witness has not qualified as an expert in the gas utility business. That is strictly a matter of the production and distribution of gas. The witness has shown no qualification whatever to answer that.

The Court: I think you better qualify him further as to that point.

Q. By Mr. Dechter: Mr. Crown, in connection with your work with the Division of Oil and Gas did you become familiar with the needs of Southern California for natural gas? A. I did not.

Mr. Dechter: What was the answer?

(The answer was read.)

Q. By Mr. Dechter: In giving your valuation yesterday of the leasehold, I believe you testified

(Testimony of Walter J. Crown.)

you gave no consideration to any increase in value by reason of the property being suitable for a gas reservoir, is that correct? A. That is correct.

Q. And are you able to give us an estimate as to how much more valuable the leasehold would be by reason of its being available for use as a gas reservoir?

Mr. Weymann: If the court please, I would like to examine this witness on voir dire.

Mr. Dechter: He hasn't testified yet whether he is able or not. It may not be necessary. Do you want the question read?

The Witness: If you please.

Mr. Dechter: Will you read the question?

(Question read.)

The Witness: I cannot.

Q. By Mr. Dechter: And is that due to the fact that this is the first time——

Mr. Weymann: That is objected to.

The Court: Don't answer the question. Finish your question, Mr. Dechter.

Q. By Mr. Dechter: Is that due to the fact that this is the first time that such a project has been attempted in Southern California?

Mr. Weymann: That is objected to as being incompetent, irrelevant, and immaterial.

The Court: The objection is sustained.

Mr. Dechter: That is all. [195]

(Testimony of Walter J. Crown.)

Cross Examination

By Mr. Weymann:

Q. Mr. Crown, you stated you were employed by the Division of Oil and Gas as a petroleum engineer for 16 years? A. Yes, sir.

Q. Will you kindly describe to the jury your duties in that connection?

A. It was supervision of the drilling operation and abandonment of oil wells, oil and gas wells.

Q. Did you at any time during the course of your employment have occasion to make an appraisal or valuation of any of the property that you supervised? A. None that I supervised.

Q. None that you supervised. The regulations of the Division of Oil and Gas prohibit any of their employees from engaging in private business, do they not?

Mr. Dechter: That is objected to on the ground that it calls for a conclusion from the witness and is not the best evidence.

Mr. Weymann: Well, the witness was an employee and he should know.

The Court: I think he should know. Under the circumstances he has been qualified as a person who was in the employ for 16 years. It was your duty to advise yourself as to those regulations?

The Witness: That is correct, sir.

The Court: Did you do it, did you advise yourself as to the regulations?

The Witness: I did.

The Court: The objection is overruled.

(Testimony of Walter J. Crown.)

Mr. Weymann: Will you read the question, please?

(Question read.)

The Witness: Yes, but I think the question needs a little clarification. There are certain things to go into private business in the fields where—well, I might state—

The Court: Oh, I think that is all too remote to have any real value. The court will order it all stricken out, that is, regarding the regulations. The jury is ordered to disregard it. Proceed, Mr. Weymann.

Q. By Mr. Weymann: Since leaving the Division of Oil and Gas, Mr. Crown, would you kindly tell the jury what your experience has been?

A. I have been consulting petroleum engineer for Atlantic Oil Company, for Morton & Dolley, Krieger Oil Company, Menco Oil Company, and Continental Development Company. I believe that gets most of them.

Q. That is five firms and corporations. What is the longest period of time that you have been consulting engineer for any of those?

A. For one year. [197]

Q. For which one?

A. Atlantic Oil Company.

Q. How long have you been consulting engineer for Morton & Dolley?

A. One year.

Q. For Krieger Oil Company?

A. About 10 months.

Q. For Menco Oil Company?

(Testimony of Walter J. Crown.)

A. About 10 months.

Q. And for Continental Development Company?

A. That is new in the past month.

Q. Within the past month? A. Yes.

Q. In your capacity as consulting engineer, did you advise—by the way, that Morton & Dolley, what business is that? A. Oil operators.

Q. In the course of your employment by any of these concerns, did you ever have occasion to advise them either on the purchase or on the sale of operating oil properties? A. I have.

Q. Which one and when?

A. I can't think of any one offhand where they have definitely made a purchase. There have been no sales, but in the case where the purchases were not made, it was on my [198] recommendation as to productivity that the property was not purchased.

Q. When were you employed to make a valuation of the Block's property in this proceeding?

A. About June 1, 1945.

Q. That is June 1st of this year?

A. That is correct, yes.

Q. What did you do in connection with that valuation?

A. I constructed a production decline curve with Colly No. 10 well and arrived at an ultimate recovery for the well.

Q. Have you that production decline curve with you? A. I have.

Q. May I see it?

A. Yes (handing document).

(Testimony of Walter J. Crown.)

Q. Mr. Crown, your estimate of value then is based on this production decline curve, is it not?

A. That is correct.

Q. How many barrels of ultimate future recovery did you estimate?

Mr. Dechter: Do you want that curve introduced in evidence? I have no objection.

Mr. Weymann: Well, I will get the information by figures.

The Witness: 40,300 barrels.

Q. By Mr. Weymann: 40,300 barrels? [199]

A. That is correct.

Q. Is that for the 100 per cent interest, that is, for the entire production?

A. The entire production.

Q. And did you estimate the value of the lessee's production separately, the 70 per cent?

A. No, I didn't figure the barrels there. I did in dollars.

Q. You figured it in dollars? A. Yes.

Q. What price did you estimate?

A. 97 cents per barrel.

Q. What gravity oil did you assume as the production? A. An average of 19.3.

Q. And what was the field price at that time?

A. At which time?

Q. What was the field price of oil of that gravity at that time in September of 1942?

A. I can't give you the exact price at that date because my price schedule jumps from May 23,

(Testimony of Walter J. Crown.)

1941 to April 1, 1943. Under May 23, 1941, the Union posted price was 77 cents.

Q. Do you know what it was on September 28, 1942?

A. I would say it would be approximately that same price.

Q. 77 cents. The 40,000 barrels which you have [200] testified as being the ultimate recovery, what period of time would that be recovered?

A. Approximately ten years.

Q. And in arriving at your valuation, did you take into consideration any pipeline charge?

A. No, sir.

Q. Do you know whether there was a pipeline charge?

The Court: A carrying charge?

Mr. Weymann: A carrying charge.

The Witness: I do not know.

Q. By Mr. Weymann: You don't know. If there was a charge, would it make any difference in your estimate?

Mr. Dechter: To which I will object as being immaterial, and assuming a fact not in evidence.

Mr. Weymann: The witness is being asked to state his opinion.

The Court: I think the objection should be overruled.

The Witness: The amount of oil would still be the same.

Q. By Mr. Weymann: Would the price of it be the same?

(Testimony of Walter J. Crown.)

The Court: What?

Q. By Mr. Weymann: Would the price paid to the purchaser be the same?

A. I don't know just how they would handle that. If they had to pay a trucking charge there, why it might be taken off the price of the crude. It will lower the price of [201] the crude.

Q. Do you know if they had to pay a trucking charge? A. I don't know.

Q. Do you know if they had to pay a pipeline charge? A. I don't know.

Q. You don't know. So, you took none of those items into consideration? A. I did not.

Q. And now you estimate the value on the basis of 97 cents per barrel? A. That is correct.

Q. Yet the posted market price you have testified, the Union Oil Company price, was 77 cents. Will you please tell your reason for using the higher price?

A. In the spring of 1943 the posted price was——

Q. Pardon me just a moment.

Mr. Dechter: May I suggest that counsel let the witness finish his answer, your Honor? I don't think it is fair to interrupt.

Mr. Weymann: May I reframe my question? I don't believe the witness can testify to anything that took place after the acquisition.

The Court: You asked him the question and I think that he ought to be allowed to answer it, Mr. Weymann. If you reframed it before he began his answer, that would be your [202] privilege. but

(Testimony of Walter J. Crown.)

I think he ought to be allowed to answer the way he started.

The Witness: In the spring of 1943 the posted price was 94 cents per barrel, and that was a matter of a few months subsequent to the commencement of the estimate. My estimate was based on the early probable productions. So, I used 97 cents which is 94 cents, the posted price per barrel of oil, plus three cents which is the value of gas and gasoline which the operator received per barrel of oil produced. There is a certain amount of gasoline produced with the oil.

The Court: It is a part of production and it is in addition to the price received for the oil itself?

The Witness: That is correct, and I applied it to the price of oil rather than making a separate valuation for the gas and gasoline.

The Court: Well, that is clear.

Q. By Mr. Weymann: So that the price you placed on that was the price of the total product. Is that correct?

A. The oil, gas, and gasoline.

Q. Now, Mr. Crown, you predicated then the price of 97 cents entirely on the increase which took place in 1943? A. That is correct.

Q. And you assumed that the price would continue to 1952? A. The assumption is that.

Q. That was your assumption? A. Yes.

Q. It was a pure assumption, was it not?

A. My own opinion is that it might be higher than that.

(Testimony of Walter J. Crown.)

Q. Now, tell us, please, how on a total recovery of 40,000 barrels over a period of ten years you arrived at a valuation of \$11,000 for this leasehold estate? Just outline the various steps which you took to the jury.

A. The estimated recovery is 40,300 barrels. The income for that amount of oil at 97 cents per barrel is equivalent to \$39,091. Mr. Block's leasehold interest of 70 per cent is equivalent to \$27,000 or \$27,364. Operating costs for the period of the life of the well are \$13,870, leaving an operating profit of \$13,494. Using a 6 per cent discount factor over that period of time will arrive at a present worth of \$10,932.- [204]

Q. Mr. Crown, what is your definition of fair market value?

Mr. Dechter: To which we object on the ground that is immaterial what his definition is.

Mr. Weymann: The witness is testifying to fair market value.

The Court: I think it is proper to ask him what his understanding is, what he meant by the use of the term "fair market value" when he gave his answer. The objection is overruled.

The Witness: Approximately \$11,000.00.

The Court: No. What do you understand by the use of that term "fair market value"?

The Witness: Well, it would be a price at which a purchaser would make a reasonable investment.

Mr. Weymann: I submit, if the court pleases, that the witness' understanding of fair market

(Testimony of Walter J. Crown.)

value disqualifies him entirely and his testimony is not admissible, on the basis of his own statement of his understanding.

A. Juror: We are unable to hear this in the jury box, your Honor.

The Court: Yes, Mr. Weymann, you let your voice drop and it is a little difficult to hear you.

Read the statement of Mr. Weymann.

(The record was read.) [205]

The Court: Have you any further questions?

Mr. Weymann: I move, now, that his entire testimony be stricken as to the value of the lease.

The Court: Well, Mr. Weymann, it isn't the definition that the court would give or you would give or Mr. Dechter, but when you analyze it, is it so very far away? We would say where a willing purchaser would buy from a willing seller and having a reasonable time in which to investigate.

Read his answer, please, Mr. Reporter.

(The answer was read as follows: "Well, it would be a price at which a purchaser would make a reasonable investment.")

The Court: I think the motion should be denied.

Mr. Weymann: I will pursue the question a little further.

Q. By Mr. Weymann: Is it your opinion, Mr. Crown, that to receive over a period of 10 years \$13,494.00 a prospective purchaser having full knowledge of all of the conditions would be willing to pay in cash \$10,930.00?

A. Yes, sir.

(Testimony of Walter J. Crown.)

Q. Do you know of any oil property that has been bought or sold on that basis?

A. I think I could mention some.

Q. Mention them, please.

A. I think Jergens Oil Company bought production at Wilmington in the Wilmington oil field—— [206]

Q. Of your own knowledge, Mr. Crown?

Mr. Dechter: Has the witness finished his answer, Mr. Weymann?

The Court: Yes, just finish your answer, and then if there is any defect in the answer you may call it to the attention of the court by a proper motion.

Read the question and the answer as far as it has been given, please.

(The record was read.)

A. ——on the basis of a thousand dollars per barrel of production.

Mr. Weymann: I move to strike that answer as not responsive.

The Court: Because he used the words "I think"?

Mr. Weymann: Because he used the word "I think" and on the basis of a thousand dollars per barrel.

The Court: Read the answer.

(The answer was read.)

The Court: Did you mean to say that?

The Witness: That is correct, yes.

The Court: A thousand dollars per barrel?

(Testimony of Walter J. Crown.)

The Witness: Per barrel. If aw ell makes 25——

The Court: Pardon me. The answer may go out. Now, you may proceed further, Mr. Weymann.

Q. By Mr. Weymann: You used a 6 per cent discount [207] factor, is that correct?

A. That is correct.

Q. Will you kindly explain to the jury just what a 6 per cent discount factor is?

A. The 6 per cent discount factor is the value or the worth of one dollar based on a 6 per cent discount—the value of that one dollar a year from today, and from there on in the future its adding a 6 per cent or deducting 6 per cent on the investment. In other words, the value of a dollar today, or, I should say, the value of a dollar approximately 10 years from now is only worth fifty-nine and two-tenths cents.

Q. Do you know of an instance, Mr. Crown, in which any one has paid approximately \$11,000.00 for an oil property out of which in the course of 10 years he could recover approximately \$14,000.00? I am using round figures now. Buy a producing oil well.

A. I can't give you any specific example.

Q. Is it your opinion that such people exist?

A. There are.

Q. Now, will you tell us, please, how you arrived at the valuation of the 10-7/12 per cent override?

A. I used the same production in barrels of oil and used a price of 93 cents per barrel. In this

(Testimony of Walter J. Crown.)

case the 93 cents—I started with 97, and the only costs against the [208] overriding interest that I used was approximately 4 cents per barrel mining rights tax which I deducted from the 97 and arrived at a 93 cents per barrel figure, and using a 6 per cent discount factor arrived at a value of \$3,120.00.

Q. Do you know what the amount of the total value in dollars and cents is? Have you that there?

A. Of the production?

Q. Of the 10-7/12 per cent over the period of 10 years.

A. \$37,479.00.

Q. No, I am sorry. The total override of the 10-7/12 per cent.

A. This is for the total, yes. 10-7/12 per cent.

Q. Is how much?

A. Let me ask first if I have the question correctly.

Mr. Weymann: Read the question, please.

(The record was read.)

The Witness: That figure is \$3,971.00.

Q. By Mr. Weymann: So, Mr. Crown, you wish us to understand that in your opinion an informed purchaser would be willing to pay a willing seller \$3,120.00 cash now in order to receive \$3,971.00 over a period of 10 years from oil royalties from the Playa del Rey field?

A. That question I would answer no. This is a royalty set-up.

Q. Pardon me? [209]

The Court: I think the court will recess at this

time until 2:00 o'clock. The members of the jury will return at that time. Bear in mind the admonitions of the court.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same day.) [210]

Los Angeles, California,
Thursday, July 26, 1945, 2:00 p.m.

The Court: Mr. Crown, will you take the stand, please?

Mr. McLay and Mr. Dechter, are you ready to proceed?

Mr. McLay: Mr. Weymann isn't here. He just stepped out. May I get him, please?

The Court: Yes. Is it stipulated that all jurors are present and in their places?

Mr. Dechter: So stipulated.

Mr. McLay: So stipulated on the part of the government.

WALTER J. CROWN,

called as a witness by and in behalf of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination* (Continued)

Mr. Weymann: I apologize to the court. I stepped out for a drink of water.

The Court: That is all right.

Q. By Mr. Weymann: Mr. Crown, what was

(Testimony of Walter J. Crown.)

this well producing in the month of September, 1942? A. 436 barrels of oil.

Q. And how much gross fluid?

A. I do not have that figure. [211]

The Court: What was that question?

(Question read.)

Q. By Mr. Weymann: Have you the record of water production? A. I do not.

Q. Did you take into account in the making of your estimate of value the cost of lifting water along with the oil?

A. The cost of lifting the water is included in the lifting cost.

Q. In other words, the lifting cost comprises the cost of lifting the entire fluid. Is that correct?

A. That is correct.

Q. So that if the water content increases and the oil content decreases, the price you received would be correspondingly decreased. Is that so?

A. The price per barrel of oil would not decrease.

Q. The total fluid of what you have lifted?

A. Of the gross fluid.

Q. Of your gross fluid would decrease?

A. That is correct.

Q. It would?

A. If there is an increase in gross fluid.

The Court: Pardon me just a moment. Mr. Crown, how many barrels did you say in that month? [212]

The Witness: 436.

(Testimony of Walter J. Crown.)

The Court: As I understand it, that is 436 barrels of oil?

The Witness: Clean oil, yes.

Q. By Mr. Weymann: Have you any records of the water production from that well during any time it went on production? A. I have not.

Q. You took no record at all of it, is that right?

A. I didn't consider the water content.

Q. You didn't consider the water content. Have you any record of the gas production during that period?

A. Not as such. I have only the value of the gas and gasoline equivalent per barrel of oil which was furnished to me by Mr. Block.

Q. And you based your estimate on the information you received from Mr. Block?

A. From Mr. Block, yes. [213]

Q. Of your own knowledge you have no record?

A. I have not.

Q. In fixing your valuation did you take into account the cost of abandonment?

A. Of which?

Q. The cost of abandonment.

A. No, I did not.

Q. Do you know the provisions of the master lease or of the sublease? A. I do not.

Q. Do you know whether or not there is an expense connected with the abandonment of a well?

A. Repeat that, please.

The Court: Read the question.

(The question was read.)

(Testimony of Walter J. Crown.)

A. There is always an expense connected with abandoning a well.

Q. By Mr. Weymann: And that is the obligation of the lessee, is it?

A. Normally.

Q. Do you know whether or not it is in this instance? A. I don't know.

Q. You made no effort to ascertain it?

A. I did not.

Q. You figured the value at which you have arrived on [214] the basis of 94 cents per barrel predicated upon an increase in the value of oil?

A. The increase was there at the time I made my valuation.

Q. The increase was there at the time you made your calculation? A. That is correct.

Q. When did you make your calculation?

A. I beg your pardon?

Q. When did you make your calculation?

A. In June of this year.

Q. When did that increase go into effect?

A. In the spring of 1943.

Q. So that from September 28 to the spring of 1943 the price was not 94 cents a barrel?

A. That is correct.

Q. It was actually 75 cents per barrel?

Mr. Dechter: I think this has all been gone into.

The Court: I think that has been covered.

Mr. Weymann: What I am getting at is the difference between the two periods.

Mr. Dechter: You asked him that this morning.

(Testimony of Walter J. Crown.)

The Court: I thought you had covered it.

Mr. Weymann: I don't think I have, your Honor.

The Court: If you haven't you may proceed.

Q. By Mr. Weymann: So that the actual amount received from September 28, 1942, to the spring of 1943 was 75 cents or thereabouts, is that correct?

A. That is correct, yes.

Q. And yet in arriving at your estimate you figured 94 cents per barrel for the entire period?

A. That is correct.

The Court: Plus the three cents for the other element that was recovered; that is correct, isn't it?

The Witness: Yes.

The Court: In other words, 97 cents instead of 94 cents.

Mr. Weymann: I am speaking now only of oil.

The Court: Yes, but he added that to the oil to give a valuation, instead of giving it separately he gave it altogether as 97 cents per barrel.

Mr. Weymann: 97 cents per barrel, but 94 cents for the oil.

The Witness: That is correct.

The Court: But his valuation was based on 97 cents. .

Mr. Weymann: If the court please, what I am trying to get at is the difference in the oil.

Q. By Mr. Weymann: There was no difference in the price of the gas at any time, was there?

A. None that I know of.

(Testimony of Walter J. Crown.)

Mr. Weymann: No further questions, Mr. Crown. [216]

Mr. Dechter: Your Honor, as I advised the court yesterday, I had subpoenaed the records of the Union Oil Company to show what the production of this well was after the government took it over, and Mr. Weymann is willing to stipulate that the letter attached to the summary of the production may be used in lieu of Mr. Edwards, the secretary of the Union Oil Company of California, appearing in person to identify that as a summary of their books and records, subject to his objection to its admissibility. Is that correct?

Mr. Weymann: That is correct.

Mr. Dechter: At this time, having so identified this statement of oil, gas and natural gasoline produced from Defense Plant Corporation Well No. 10 at Playa del Rey, formerly Block Oil Company Well No. 10, I will ask leave to offer this as a Defendant's exhibit.

The Court: It may be received.

Mr. Weymann: I thought the court was going to examine it. I have an objection to it.

The Court: Very well. Strike out the statement of the court.

Mr. Weymann: I object to the receipt of that in evidence on the ground it is entirely incompetent, immaterial and irrelevant; has no bearing on the value of this property as of September 28, 1942. It shows the production of that well during a period after the government took it over. The [217] basis

(Testimony of Walter J. Crown.)

of the valuation for this property, as I understand the law, must be on the condition as it existed at the time the property was taken.

Mr. Dechter: The same argument was made yesterday when Mr. Block was on the stand, may it please the court, and I pointed out——

The Court: When who was on the stand?

Mr. Dechter: Mr. Block. The same objection was made and the testimony received, but your Honor later on struck it out merely because his information came from the oil company that was buying the oil and not his own personal information. I argued yesterday to your Honor that both our witnesses and the government's witnesses are going to base their valuation on the estimated future production of this well, and this is some evidence as to what the well was capable of doing. Mr. Weymann made the counter argument that there might be some reasons for the increased production. Your Honor said that was a matter he could bring out on cross examination or by independent evidence; that it went to the weight and not to the admissibility.

Mr. Weymann: There is a further reason, if the court please. The whole question to be determined here is what an informed buyer would pay to a willing seller of that property at the time it was taken. Now, manifestly an informed buyer can only base what he would be willing to pay on whatever [218] evidence was available as of that date. He would not have the advantage of the actual production subsequent to that time. That would have

(Testimony of Walter J. Crown.)

no influence whatever on the price he would pay or what the owner would be willing to receive. In other words, it would require a prophetic vision on the part of both buyer and seller to take into account something which happened in the future. As a matter of fact, he may take into account trends or what he thinks might happen in the future, anything of that kind which would influence the market. But certainly the actuality of what actually occurred under the circumstances would have no bearing whatever as to the market value influencing either party. [219]

Mr. Dechter: In my opinion, your Honor, it is exactly similar as if the Government was condemning a crop of potatoes on the farm, the crop having not been just merely planted but hadn't even come up. Some of these crop buyers who are constantly buying crops in advance would come in and give figures of so much. By the time the trial came up, the crop had been harvested. Now, that wouldn't be evidence of what the value is. It would go to show the reasonableness of the opinion given on that particular date, and that is the purpose for which it is offered, to show the reasonableness of the various opinions that will be given by the experts.

The Court: I think that the court should give further time to consideration of this. It seems that it is not required of the court that it should shut its eyes to the figures that we actually have here where they are available. In other words, Mr. Crown or any other expert has to give an estimate of what

(Testimony of Walter J. Crown.)

the valuation was on the date of September 28, 1942. Now, he must base that upon his knowledge of all the circumstances that he has, and as it has been stated in a very recent case, one referred to by Mr. McLay yesterday, sometimes these estimates are little better than a guess.

Now, we have had the advantage of three years almost since that time. Must the court shut its eyes and the jury close their ears to the testimony which we actually have of [220] the value that was produced from the well? Now, I don't know. Sometimes we have rules and they seem reasonable as of a certain time, but is this such a hard and fast rule that Mr. Crown or the others can't avail themselves of that information which they actually have? Certainly for a period of three years nothing could be better than the actual results.

Now, while there might be a situation as to why it was a greater production, I can understand it might be by reason of repressure in there as the result of the storage, and certainly that must be given consideration; also, that there is only so much oil available there and that if it is gotten out in five years instead of ten, there would be no more oil. However, so far as the price itself is concerned, that is a posted price which was paid for oil of like character throughout the field.

It does present quite a question and the court may have to call on you gentlemen for help from some of the precedents that have been established in similar cases.

(Testimony of Walter J. Crown.)

Mr. Weymann: May I make one further observation?

The Court: I was going to say that the court will sustain the objection at the present time. Let it be marked as Defendant's Exhibit A for identification and then the matter may be presented to the court again before the close of the trial. [221]

Mr. Dechter: Very well, your Honor.

(The document referred to was marked as Defendant's Exhibit A for identification.)

The Court: Anything further, Mr. Dechter?

Redirect Examination

By Mr. Dechter:

Q. Mr. Crown, when you gave your opinion as to the fair market value, did you have any information available to you as to what the production was after September, 1942?

Mr. Weymann: That is objected to as being incompetent, irrelevant and immaterial as to what it was after the time it was sold.

The Court: It does not appear to the court that this is a matter for redirect examination in any event. The objection is sustained.

Mr. Dechter: May I make an offer, your Honor, on that?

The Court: Yes.

Mr. Dechter: Does your Honor want us to approach the bench?

The Court: Yes.

(Testimony of Walter J. Crown.)

(Thereupon, counsel approached the bench, and the following proceedings were had out of the hearing of the jury:)

Mr. Dechter: I offer to show by this witness that he [222] did not have this data on the production subsequent to September of 1942 available to him, and that if he had, his opinion would have been different as to the value of the property.

The Court: Well, I am convinced it is not a matter for redirect examination.

Mr. Dechter: Very well. May I note an exception?

The Court: Yes.

Mr. Dechter: Thank you.

The Court: Also, I think it is incompetent, irrelevant and immaterial. It goes to a negative matter.

Mr. Dechter: Very well, your Honor.

(Thereupon, proceedings were resumed within the hearing of the jury.)

Q. By Mr. Dechter: Mr. Crown, when you gave your valuation as to the leasehold interest on direct examination, you excluded any value on personal property, did you not?

A. That is correct.

Q. Your value was confined to the value of the oil leasehold from an oil standpoint only?

A. Oil and gas.

Mr. Weymann: Will you speak up a little louder, Mr. Crown?

(Testimony of Walter J. Crown.)

The Witness: Oil and gas.

Q. By Mr. Dechter: On or about September of 1942, and [223] since that time has the number of buyers per oil leases and royalties been greater or less than the supply of oil leases and royalties offered for sale?

Mr. Weymann: That is objected to as being incompetent, irrelevant, immaterial, and not proper redirect examination.

The Court: It does not appear to the court that there is proper foundation. I don't believe Mr. Crown has attempted to qualify himself as one who knows of the state of the market for oil leases or royalties. In any event, I think the objection should be sustained.

Q. By Mr. Dechter: Are you familiar, Mr. Crown, with what the general consensus of opinion among oil men as to whether the price of crude will go higher or lower as soon as Governmental regulations are lifted?

Mr. Weymann: That question is objected to as purely hypothetical and calling for a conclusion as to the opinions of other men.

Mr. Dechter: It is a preliminary question, your Honor, whether he is familiar, and then I will ask him what his familiarity is based upon.

The Court: The objection is sustained. He has already stated his own idea about it.

Mr. Dechter: I believe that is all. [224]

(Testimony of Walter J. Crown.)

Recross Examination

By Mr. Weymann:

Q. Mr. Crown, in arriving at your valuation for the production of this well, did you predicate that on the use of the equipment which was presently in the wall?

Mr. Dechter: To which we object on the ground that it is improper recross examination. There was nothing asked on redirect. Every objection was sustained.

Mr. Weymann: The question was asked whether he excluded the value of the equipment.

The Court: Will you read the question?

(Question read.)

Mr. Dechter: I will offer the further objection that it has been asked and answered by Mr. Weymann on cross examination.

The Court: I think it has. Objection sustained.

Mr. Weymann: Very well. No further questions.

The Court: That is all, Mr. Crown.

Mr. Dechter: I will call Mr. Bauer.